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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 636

ABRAHAM TEITELBAUM,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ABRAHAM TEITELBAUM, Petitioner,
Attorney pro se,
100 North La Salle Street,
Chicago, Illinois.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Justices of the Supreme Court of the United States:

Abraham Teitelbaum, acting as attorney *pro se*, petitioner, prays that a writ of certiorari issue to review the judgment entered in this case on August 24, 1961 by the United States Court of Appeals for the Seventh Circuit, which affirmed the judgment of the Tax Court of the United States and to which opinion a dissenting opinion has been made reversing in part the Tax Court decision. The Petition for Rehearing was denied on October 3, 1961.

OPINIONS BELOW.

The findings of fact and Opinion of the Tax Court are reported in C.C.H. December, 24,031 (M)T.C. memo 1960-11. The Opinion of the Court of Appeals is printed in Appendix "A," reported in 294 F(2d) 541.

JURISDICTION.

The judgment of the Court of Appeals was entered on August 24, 1961. Petition for Rehearing was denied on October 3, 1961. The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code, Appendix "B."

QUESTIONS PRESENTED.

1. Can the Commissioner of Internal Revenue levy an income tax against a person without first examining the available books and records of a taxpayer, in absence of an emergency for a jeopardy assessment?

2. Can such an assessment stand without giving the taxpayer the usual and customary opportunities to review such a tax at the various levels for review in the Internal Revenue Department?

3. Section 58 I.R.C. is in contravention of the United States Constitution and is therefore unconstitutional.

4. The penalties under Sec. 294 I.R.C. are unconstitutional.

5. The application of the 16th Amendment to the Constitution of the United States as to special treatment and the persecution of Petitioner is unwarranted, illegal and confiscatory; and is therefore unconstitutional.

STATUTES INVOLVED.

This case directly concerns the application of the entire Internal Revenue Code as enacted under the 16th Amendment to the Constitution of the United States as to:

1. The levying of a tax based upon no examination of the available books and records of the petitioner taxpayer.

2. Power to destroy a taxpayer under the guise of collecting an income tax.

3. Denial of due process of law to a taxpayer.

4. Denial of the Equal Protection clause under the Constitution of the United States.

5. The penalties provision for failure to file an estimate for taxes is unconstitutional.

STATEMENT OF THE CASE.

Commissioner of Internal Revenue levied taxes and penalties for failure to file estimated taxes against Petitioner for the years 1949-1951, inclusive, without first examining the available books and records of petitioner. The proof of this is undisputed because thereafter the Internal Revenue Department sent taxpayer forms to extend the Statute of Limitations for those years to first examine such records.

One of the Honorable Judges of the United States Court of Appeals for the 7th Circuit filed his dissenting opinion in part to the ruling of the Circuit Court as set forth in the Appendix "A," 294 F. 2d 541.

On January 21, 1953, Petitioner was indicted for failure to pay income taxes for the years 1946 and 1947 (Tr. pp. 127-145 incl.) which he had paid in full on October 3, 1952.

In 1955, Petitioner was again indicted for income tax violation of Sec. 145(b) of 26 U.S.C.A. for the years 1950 and 1951, because of his refusal to plead guilty to the first indictment (Tr. p. 203).

Petitioner was found guilty in the first case, and Honorable J. Samuel Perry, Judge of the U. S. District Court, suspended the imposition of any sentence. Due to lack of funds to defend the second indictment, Petitioner was obliged to plead *nollo contendere*, and the Court entered a twelve-month suspended sentence, and granted probation.

The District Attorney then filed his petition to disbar Petitioner from the practice of law in the Federal Court, and the three U. S. District Court Judges, comprising the Honorables Igoe, La Buy, and Sullivan, commissioned Judge Sullivan as the Chief Justice to hear and determine the disciplinary proceedings. Citing *In Re Teitelbaum*, 253 F. (2d) 1.

The petition for disbarment was denied, and the District Attorney who was the designee to become an Associate Judge of the U. S. Court of Appeals for the Seventh Circuit at that time, decided to appeal said decision to review the District Court's action. *In re Teitelbaum*, 253 F. (2d) 1.

The Court of Appeals dismissed said appeal, and the Opinion filed therein is important to a proper termination of this cause. Citing: *In re Teitelbaum*, 253 F. 2d 1.

On May 21, 1958, the Supreme Court of Illinois suspended Petitioner from the practice of law for three years, even though the Federal Courts held heretofore that the same facts did not warrant any discipline. Citing: *In re Teitelbaum*, 13 Ill. 2d 586.

The Honorable J. Samuel Perry, Judge of the United States District Court, in commenting on the evidence in the first indictment said:

> "There is something to be said on behalf of the Defendant in this matter, and that is this, that the

Defendant has *not concealed one dollar total gross income* from the United States, according to the records, as I have found them.

"The total amount of money that he has received, that passed through his hands, has been correctly reflected." (Pet.'s Ex. 53 CR. 36.) (253 Fed. 2nd 1)

The Bill of Particulars in the first indictment states that there does not appear to be any income tax now due and owing from Abraham Teitelbaum. The amounts charged are the amounts due and owning from the Tyted Co. (Pet'r Ex. 53 CR 36.) (Joint Exhibit 3c)

The District Director in his letter stated that, "The Tyted Co. was a naked trust, and all taxes that could have been assessed to the Tyted Co. were assessed to Abraham Teitelbaum and have been fully paid." (Exhibits Nos. 29CC, 30DD, and 31EE.)

Judge Russell E. Train of the Tax Court stated:

"Counsel agrees that this is an involved and complicated case, and there are as many issues in controversy as one can imagine. Exactly what item are we talking about." (Tr. of Rec. p. 1414)

THE FEDERAL COURT HELD, "IN THE TEITELBAUM CASE," IT WAS AFFIRMATIVELY SHOWN THAT, "HE HAD NOT CONCEALED ANY GROSS INCOME."

In the matter of Abraham Teitelbaum, cited in 253 Fed. (2nd) 1, this Honorable Court said, on p. 2:

"Judge Perry also commented: A mitigating factor was Teitelbaum's honesty in listing all of his gross income in his returns."

It is sincerely argued that the Respondent has attempted to throw doubts on the Court's Findings of Fact

by bringing in new theories in order to show additional gross income.

Mr. Seieroe, counsel for Respondent, in his opening statement (Tr. p. 216) stated in answer to the Tax Court's question, what was the total understatement in 1946, stated "It would be approximately $14,000."

It is respectfully urged that a tax on that amount would be less than 100%; however, for that same year of 1946, the Jeopardy Assessment levied and amount collected was, income tax $24,741.76 plus penalty $12,370.88, making a total tax of over $37,000, which Petitioner paid twice for himself and on behalf of Esther Melnick Teitelbaum, making a grand total of over $74,000 on this item alone.

The Court disallowed Christmas bonus from the client of Petitioner on the ground that it was not a gift, but additional revenue and income. Of course, every gift is voluntary, but, in the case at bar, a client gave his lawyer a Christmas gift of money in addition to the retainer paid. The relationship was an attorney-client one, and not employer-employee. Why did the Respondent allow a similar gift for the year 1948? No additional legal services were given for this gift. *The gift given was less than the exempted amount permitted as gifts, hence they were not taxable.*

It is somewhat interesting to note the testimony of a Mr. Ruggaber the tax expert for Respondent (Tr. pp. 1048-1053). On page 1052 he said:

> Q. "Can you determine what would be his correct tax on his individual income tax liability for the year 1946?
>
> A. "$8,549.07.

Q. "Assuming he paid $1,663.53?
A. "He would still owe $6,885.52."

Same questions were propounded as to Petitioner's liability for tax for 1947.
A. "$22,394.26."

Certainly, the above concrete evidence was overlooked by the Trial Judge, and this was evidence elicited from Respondent's witness.

The following matters and things, have either been overlooked or misapprehended by the Circuit Court, in that opinion, because of the consolidation of two tax cases based on different facts.*

I.

ASSESSMENT BASED ON NO RECORDS.

Respondent levied a tax assessment, in the second case, which had no foundation, either in fact or law. Prior to the levying of that tax assessment, there had been no examination of any kind of the books and records of the petitioner by any revenue agent, or of any agent of the respondent.

Of a certainty, any tax assessed against anyone, has no legality, unless, (a) it is based upon an examination

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* Included for review, in the instant proceeding before this Court, are two separate income tax trials of the petitioner: the first being for the years 1946 through 1947; and the second, being for the years 1949 through 1951.

For the now apparent purpose of overburdening the petitioner, both of said separate tax cases were consolidated and tried together, resulting in the badly confused record before the Court. Now patent, is the purposeful commingling of facts and issues, imposed upon this Court by the overriding determination of the respondent to pervert the orderly administration of justice in order to destroy petitioner.

of that taxpayer's records, and (b) the taxpayer must also be afforded an opportunity to review findings of revenue agents at the various levels available to each and all taxpayers (c) under the existing practices and existing customs consistently controlling (d) in the administration of the tax laws of the United States.

Equally, to deprive petitioner of each, every and all of the said rights violates not only the Due Process clause, but also the Equal Protection clause of the Constitution of the United States.

The record herein, unquestionably shows, that not only, at the time of the hearing of this matter by the Tax Court, for the very first time, did the revenue agents examine the books and records of the petitioner, but it also shows, by the wording and dates of the forms used to extend the statute of limitations, which are exhibits before this Court, that no examination of the books and records of the petitioner, by any agents of the respondent, preceded the assessment or the hearing of this matter in the Tax Court.

Petitioner respectfully urges this Honorable Court to review the Circuit Court's opinion on this point which should be determinative of the entire proceeding and in favor of petitioner.

The Jeopardy Assessments for the Years 1949 Through 1951, Were Made Without Any Examination of the Records of the Petitioner, as Admitted by the Agent.

The question that is unanswerable by the respondent, unless it wishes to demolish its case against the petitioner is this: Why did the respondent, long after the indictment and trial, request the petitioner to execute its requisite forms which would have extended the period of the statute of limitations against respondent, and would have enabled the respondent, had they been exe-

cuted, by the petitioner, to examine the books and records of the petitioner, for the very first time?

For the fact is that this petitioner, rendered impecunious by the unrelenting onslaught made against him, over a period of years, after he had divested himself of his monies and properties, as evidence of good faith regarding payment of his tax matters, was financially and physically and mentally incapable of gathering the material, accountants, attorneys, witnesses and money, to prepare and present any defense. It was for this reason, that he pleaded, nolo contendere. Only one who has faced the juggernaut of this form of federal power can comprehend the utter helpless and hopeless feeling of the petitioner, at that time, in that situation.

From the lips of a government witness, Mr. Tillotson, Internal Revenue Agent, comes this astounding testimony, as to the real issues that were involved in the second income tax criminal trial of the petitioner, as well as the second jeopardy assessments for the years 1949-1951, inclusive:

"By Mr. Teitelbaum:

"Q. Mr. Tillotson, do you know whether or not the firm of Teitelbaum and Melnick had a cash book showing receipts and disbursements for the year 1949?

"A. I do not know of my own knowledge. It was never given to me. It was never shown to me.

"Q. Have you ever seen this document before?" (The reference is to Petitioner's Exhibit 57.)

"A. No. I haven't seen any cash books prior to today." (Tr. 771.)

To further illustrate respondent's overzealousness, there is now pending in the Tax Court proceedings against Petitioner for taxes on subsequent years, also based upon no examination of the books and records of petitioner, Docket # 88322 & 89805.

Thus it is obvious, that until the government first saw and partially examined the books and the records of the petitioner, at the tax trial, as testified to by the government witness, Tillotson, that respondent was proceeding on surmise and conjecture, as the basis for this entire tax proceeding against petitioner.

II.

PETITIONER PAID PARTNERSHIP ASSESSMENTS.

The opinion of the Circuit Court correctly finds, in its second paragraph, that, on behalf of himself and his partner, Esther Melnick Teitelbaum, petitioner paid an assessment in excess of $340,000, for the years 1944 through 1948. Respondent made a determination in 1960 that the claimed partnership, was in fact and in law, not a partnership; that Esther Melnick Teitelbaum has not been a partner of petitioner since 1945. (Tr. 1438.) This determination by the respondent, was embodied in an exhibit filed in triplicate, and made a part of the record before the Circuit Court. (Appendix D(1))

On the basis of that determination by the respondent, petitioner is entitled to the return of $170,000, which is one-half of the $340,000, paid under protest.

III.

INDIO DATE RANCH EXPENSES.

The Indio date ranch was a business, operated as such, and deductions were allowed for the year 1948, by express stipulation with respondent. This reflected the attitude of the respondent, from that time, until the hearing before the Tax Court, in 1959. At the end of that hearing, which consumed three weeks, the trial judge became aware of the fact that there had been no examina-

tion of the books and records, checks, bills and vouchers of the petitioner. It was at this juncture of the proceedings, that the judge of the Tax Court, ordered one to be made. It is asked that this Court consider the propriety of such being ordered done, by the trial judge. Is it proper, in any sense, for agents of the internal revenue service, to first attempt to find the facts of the very matter then pending and actually on trial before the Tax Court?

Even so, petitioner's testimony remains uncontroverted by anything in the record before the Tax Court and this Court, that the Indio date ranch was operated as a business.

Additionally, the Tax Court failed to credit petitioner for his payments of interest on mortgages and real estate taxes on the date ranch. Surely the zealousness of respondent should not be permitted to compound his errors.

The purpose and intent of the express stipulation, entered into by the petitioner, with the respondent, was to reach an agreement to the fundamental fact, that in 1948, the losses of the Indio date ranch, were allowable and proper. In the face of this stipulation of fact, it is without any legal bases, unless evidence was introduced to show any change in either management or operation, which was not done, for the legal effect and consequence of that express stipulation to be disturbed or altered.

Wrongful Disallowance of Date Farm Losses for the Years 1949 Through 1951.

The judge of the Tax Court ruled that losses resulting from the operation of a date farm in California, where the wife of the petitioner lived, was not deductible as

business losses, by reason of the fact, existing only in the mind of the trial judge, that the date farm and a separate residence for the wife of the petitioner, were one and the same. With emphasis on the latter.

Of course, this is contrary to the stipulation—which conceded that losses were allowed by the respondent in the operation of the date farm for prior years. No evidence by respondent was heard, nor were any logical conclusions to be drawn that would warrant the determination of the Tax Court to the contrary. It is unimpeached by anything in the record, that the date farm was in the category of a business, on the record. That date farm did earn money, all fully accounted for, in the returns, but, in addition, there were also, losses. Both of these statements were substantiated by vouchers and checks introduced into evidence.

In the light of the finding of the Tax Court, the petitioner is unable to reconcile them, to this statement made by the trial judge of that court, according to the record:

> "If this was a bona fide farm operation, then the petitioner is entitled to a deduction. I don't know whether for all, but certainly some of these items. You cannot operate a farm for nothing. To exclude this evidence on the ground it is all the Petitioner has, on the basis that you have never seen it, seems to me, is not presently the position to do justice." (Tr. 984.)

And this has reference to the exhibits as to expenses of the date form, which were introduced into evidence, immediately thereafter (Tr. 879) and concerned with Petitioner's Exhibits 62, 63 and 64.

Again, we quote Mr. Seiroe, counsel for the respondent:

> "It seems that this disallowance (farm losses 1949 1950-1951) is not established, and if the loss was incurred that it is not established that it was a loss incurred in a business entered into for profit. I think that is a lot for us to admit but it is admitted in our stipulation that in 1948 there was a loss sustained of $28,000 odd and that loss was not disallowed." (Tr. 744.)

Yet, despite all of the foregoing, without any showing of any change of circumstances, the losses claimed as deductions, by petitioner in his returns, for the years 1949, 1950 and 1951, were disallowed *in toto*, without any basis ascertainable from the record.

Petitioner testified in the Tax Court proceeding:

> "I swear to your Honor, that these are legitimate bills. I say I take an oath that these bills were paid in the regular course of business, and this was a business venture. This was no hobby. It was something which we expected to make money. As a matter of fact the reverse turned out." (Tr. 875.) (Petitioner's Exhibit 62 was introduced into evidence, Tr. 879.) Please see Appendix "E".

The Tax Court should not have disallowed the amount of $54,140.56 for the three years in question.

IV.

CONVERSION OF ELECTRIC CURRENT FROM DIRECT TO ALTERNATING, WITHOUT ENHANCING THE VALUE OF THE BUILDING, DOES NOT CONSTITUTE A CAPITAL EXPENDITURE, BUT MERELY ORDINARY EXPENSE.

The ruling of the trial judge of the Tax Court, on the matter of the converting of the electric current system in the Fine Arts Building, from D.C. to A.C., involving $133,985, was:

"• • • that the cost of converting the electricity in a building from direct current to alternating current as required by ordinance of the City of Chicago was a capital expenditure."

For the facts are and the uncontroverted proof is that the Commonwealth Edison Company, assumed, as its portion of this expenditure, all monies in excess of $79,951.66. Yet, the Respondent disallowed this sum, in addition to $2,000 claimed as additional disbursements.

However, respondent had earlier entered into a Stipulation of Facts, with the Respondent, covering this precise matter: the Second Supplemental Stipulation of Facts. (Pages 75-77, Respondent's Brief.) The failure of respondent to (a) introduce any evidence to challenge this stipulation in any respect, and (b) the respondent's failure to contradict or challenge the testimony of Alexander Spitz, architect and engineer in charge of the conversion, is submitted that the ruling of the trial judge of the Tax Court, on this point, is arbitrary.

Alexander Spitz, the architect and in charge of the changeover from D.C. to A.C. current, in the Douglas Building, testified that the changeover did not increase the value of that building. (Tr. 854.) He amplified that statement with these words:

"It just merely puts the building in compliance with the law." (Tr. 857.)

The disallowance of the costs of conversion for the year 1949, amounts to $29,459.11; the disallowance of the conversion for the year 1950 amounts to $67,313.60. So the total cost that the Tax Court refused to disallow, for the cost of the conversion, from D.C. to A.C., for the Douglas Building, also known as the 20 E. Jackson Building, is the sum of $96,772.71.

The conversion of the electric current from direct (DC) to alternating (AC), properly should be considered a necessary expense, rather than a capital item. Indeed, the Commonwealth Edison Company, which shared the expenses of that conversion, in that building, deducted that amount that it contributed to that conversion, as expense in its income tax return.

The dissenting opinion, which considers that conversion expense to be an ordinary and necessary one, rather than a capital expense, brings this question to mind for this Court to consider: What would be its ruling, should the City of Chicago, in another year, pass an ordinance, requiring the conversion of that property back to direct current (DC) from its present alternating current (AC)? It would yield an incongruous result, should this Court again hold that that conversion was another "capital" expense, but that would be the way that this Court would have to hold in the name of consistency.

V.

TRAVEL AND HOTEL EXPENSES.

Page 8 of the opinion, Appendix "A", states that the Tax Court properly found no deductible travel expenses beyond those allowed by the respondent. None was allowed by respondent for hotel or travel expenses for the years 1949, 1950 and 1951, involved in the second Tax Court proceeding, in spite of the facts, uncontraverted, as disclosed by hotel bills paid, receipts, checks and airline tickets. None of these silent witnesses had been seen, nor their production requested by any internal revenue agent.

Moreover, since the opinion finds that while in Chicago, the petitioner lived at a hotel, and maintained his resi-

dence in Indio, California, it appears that he should be allowed travel expenses, to and from Chicago, as well as hotel expenses, for there is no assertion that he did not conduct business in Chicago. Further, if the respondent, maintains that the Indio operation was not a business, but a residence, this was the home petitioner left and returned to, from time to time.

Obviously, the respondent cannot have it two ways: he must admit that the Indio operation was a home, and allow travel expenses, or he must admit that the Indio operation was a business, and allow travel expenses.

Wrongful Disallowance of All Hotel and Travel Expenses for the Years 1949 Through 1951.

The entire record is barren of any evidence that supports the conclusion of the Tax Court: no travel expenses are allowed for 1949, 1950 and 1951.

Between 1947 and 1952, the petitioner owned no Chicago residence: petitioner sold his Chicago residence in 1947 and owned none until 1952.

During the period, 1947-1952, the respondent resided, when in Chicago, at a hotel in Chicago, the Blackstone, notwithstanding respondent's statement to the contrary, in his Brief, page 20. It was to and from this place, that he came and went, as his affairs and business demanded. Although the Tax Court held, that the date farm, in Indio, California, was the home of the respondent's wife, and so could not be a business of the respondent, yet the Tax Court held that travel expenses to and from Indio, California, were not deductible as travel expenses, and were disallowed. It is patent that if the respondent resided in Chicago or in Indio, that travel expenses must be allowed and deductible, from either one place, or the other, as the residence of the

petitioner, to any other places. And all travel expenses claimed by this petitioner, were supported by vouchers and checks for the years 1949, 1950 and 1951. And the testimony of the petitioner to all of this is uncontested, so the decision of the Tax Court, on these matters, is manifestly against the weight of the evidence.

At page 39, of respondent's brief appears this:

> "In brief, for the years 1946 and 1947, this case involves the repeated failure by the taxpayer to report substantial items of gross income * * *"

This unwarranted assertion of the respondent is completely negated by these words, uttered by the trial judge, J. Sam Perry, concerning the selfsam taxpayer (*In the matter of Abraham Teitelbaum*, 253 Fed. 2d 1, 2):

> "A mitigating factor was Teitelbaum's honesty in listing all of his gross income in his returns."

Again, at page 51 of respondent's brief, it is said:

> "The taxpayer introduced no proof of deductible travel and hotel expenses in excess of the amounts allowed by the Commissioner".

This statement is not supported by the facts within the record, and within the knowledge of the respondent:

> "It is the court's understanding that the respondent is willing to agree that Mr. Teitelbaum does have vouchers and travel stubs which substantiate the payments shown on Exhibit number 58 covering travel for 1951." (Typewritten Appendix, filed by petitioner; p. 912, *et seq.*)

As if this were not sufficient to convince this Honorable Court of the character and contents of the brief of the respondent, this statement, made by Mr. Scieroe, counsel

for the government, who made this statement of admission in the proceeding before the Tax Court:

> "For 1949 and 1950 I think we could agree that the airline tickets which Mr. Teitelbaum has will substantially agree with the travel indicated as a deduction on the return. Not so as to 1951 where he lumps travel and hotels together. We just don't know in that case." (Tr. 911.)

The Tax Court judge wrongfully denied petitioner his claimed, and proved, deductions, for all travel and hotel expenses, for the years 1949 through 1951, in the amount of $30,207.52.

VI.

WRONGFUL DISALLOWANCE OF LOSSES IN RADIO STATION WMOR.

Although the corporation that owned the station (Metropolitan Radio Corporation) was adjudicated a bankrupt in 1952, it is obvious that it had arrived at that condition prior thereto. There being no better evidence of uncollectibility than bankruptcy of the debtor, and the undisputed testimony that the losses occurred in 1951: that Station WMOR ceased to operate in December of 1951, and went into bankruptcy thereafter, certainly upsets the findings of the Tax Court, with regard thereto.

It is undenied that respondent filed his claim for $71,000, and it is also undenied that respondent received no dividends from the bankrupt corporation.

And in proof of the correctness of this contention of the petitioner, we offer the statement from and in confirmation of this contention of the petitioner, from the brief of the respondent. There the respondent makes our position very clear, in the respondent's Statement of Facts, page 23 of his brief.

"During the year 1950 the stock of the Metropolitan Radio Corporation of Chicago, Inc., hereinafter referred to as Metropolitan, which owned and operated station WMOR, an FM radio station, was held by various individuals including Donald Kiesau, and Daniel L. Toffenetti, officials of the Chicago Restaurant Association. Sometime in 1951, Kiesau, Toffenetti and others, aware that the corporation was proceeding to insolvency, sold their stock to the taxpayer at about ten cents on the dollar. The taxpayer intended to help Kiesau and Toffenetti by taking the stock off their hands. (R. 1333, Appendix B, *infra*.)"

The respondent by these words concedes this contention of the petitioner.

Further the typewritten appendix sets forth that a Joint Exhibit as to Station WMOR, was entered into and introduced, showing its itemized expenses. Referring to this, the following occurred between Mr. Berman, one of the counsel for the respondent:

> "Mr. Teitelbaum: I have a document I would like to offer as a joint exhibit.
>
> "Mr. Berman: No objection.
>
> "Mr. Teitelbaum: It set forth the entire bankruptcy of Station WMOR and the monies advanced for the station were gone, finished, and at an end, and the monies were paid in 1951. (Transcript of Record 769; Joint Exhibit 56 A 5.)
>
> "Q. What amount of checks could you not verify as being in connection with Station WMOR?
>
> "A. This is an amount of $22,269.99 which I could not verify as being expenses of WMOR." (Tr. 784.)

Thus, the witness for the respondent, by his admission that he could not verify the sum of $22,269.99, admitted that he could verify approximately $50,000, of the claimed

$71,000. By this admission, approximately $50,000 claimed by the petitioner should not have been disallowed by the Tax Court, for losses sustained by the bankruptcy of radio station WMOR.

The Trial Judge stated that the loss of $71,000 for Radio Station WMOR was not allowable in 1951, because the corporation was adjudicated a bankrupt in 1952. *This finding is clearly erroneous because an involuntary petition in bankruptcy was filed for the radio station, and the radio station ceased to do business in December 1951.*

All payments and advances were made by Petitioner only in 1951. Petitioner filed his claim in the Bankruptcy Court, and there was no dividend. The law is equally clear that the losses are deductible in the year that they have occurred and not by the date when a corporation is adjudicated a bankrupt.

Citing *Sabath* v. *Commissioner*, 100 F. (2d) 569.

The Tax Court held that the losses of the Metropolitan Radio Corporation could not be deducted, in 1951, because that corporation was adjudicated a bankrupt in 1952. The Tax Court held that at least $48,289.83 was paid as and for expenses of that corporation. (Opinion p. 8.)

On this point, the evidence submitted to the Tax Court, was the testimony of petitioner: that he paid all of that money out in 1951, when that radio broadcasting corporation ceased to do business. This uncontroverted evidence of uncollectibility had further probative force by the filing of a claim therefor in the Bankruptcy Court, and, the receipt of no dividend.

The numerous authorities, on the point of when losses should be deducted, all enunciate this principle: losses are deductible in the year in which they actually have occurred.

VII.

DISQUALIFICATION AND PREJUDICE.

To discuss the question of whether or not the judge of the Tax Court should have disqualified himself is apparently only a matter of procedure. Petitioner did not accentuate that point in his oral argument. The question of prejudice of that trial is urged upon this Court, that what is really involved is a question of judicial morality: that at the outset, the duty was incumbent upon the judge of the Tax Court of making his knowledge of his attitude toward the petitioner, quite clear.

It is incorrect to say that that trial judge had had no connection with or knowledge of the petitioner prior to petitioner's trial in the Tax Court before him.

Can it be reasonably said, that the drama, impact, implications and tensions of the King Committee, an arm of the Congress had not left an impression on that trial judge? Of that incident, later, May 18, 1959, in the Tax Court proceeding (Tr. p. 81), Russell E. Train, Judge, said:

> "and I mentioned in passing that I had been present during those hearings and had heard you testify. I was at that time an attorney on the staff of the Joint Committee on Internal Revenue Taxation, an arm of the Congress, not a member of the staff of the King Subcommittee."

Thus, according to his own words, the judge of the Tax Court, while employed by one arm of the Congress,

as an attorney on the staff of the Joint Committee on Internal Revenue Taxation, was an interested auditor and spectator when the respondent testified before another arm of the Congress, the King Subcommittee. In view of the certain recollection of the trial judge, of the occasion of this petitioner testifying, under those most unusual circumstances, and in view of petitioner's testimony, and the repercussions and consequences that grew out of that hearing, it rather strains credulity, to assume that the trial judge of the Tax Court, might not have received some impressions of the petitioner, then and there, which he perforce carried in his mind, even unaware of their presence, and which may have affected his rulings in that trial. Please read Appendix "G".

Of a certainty, they had some effect. However, it is suggested that "due process" does not contemplate that the trial judge should have any pre-conceived attitude or disposition, for or against the person on trial before him. Hence, it is urged, that the duty was on the judge, *sua sponte*, to refuse to preside, and thus remove even the possibility of prejudice on his part.

STIPULATIONS.

From time to time, during the entire period of the involvement of the petitioner, with the respondent, a series of stipulations were entered into, by and between the petitioner and the respondent. These set out and specified certain facts on which both signatories thereto, had agreed as being true, correct and binding upon both parties to these proceedings. They were unalterable, ultimate facts and factual conclusions.

But here, stipulations removed certain contentions. On the facts and conclusions therein specified, there is nothing for the trial judge to do, but to accept them, for he has

no independent means of obtaining evidence on those matters. Please read Appendix "F".

Since such was not done here, the Tax Court judge has disregarded the stipulations, and had no evidentiary basis for adducing the proof on which to predicate his decision on the matters and things covered by the stipulations of the adversary parties to this proceeding.

VIII.

ROOSEVELT COLLEGE MORTGAGE.

On page 7 of the opinion of this Court, it is stated:

> "Mr. Teitelbaum promised to produce the original copy of a letter. Thus the determination of whether the interest payments were by agreement converted to principal rested on the tax Court's evaluation of Mr. Teitelbaum's credibility on this point. The Commissioner's investigation had disclosed no knowledge of this agreement on the part of the Roosevelt College authorities."

Petitioner testified that the letter mysteriously disappeared during the tax Court hearing. The respondent who had the burden of proof could have subpoenaed the authorities of Roosevelt. Petitioner could not afford to do so because of his impecuniosity, occasioned by the hardships brought about by the conduct of the respondent. However, on September 5, 1961, petitioner visited Roosevelt University, and there the original receipt agreement was found, not in the President's office, but in the files of the Dean.

A copy is hereto annexed as exhibit "A", which not only vindicates the veracity of petitioner, but also resolves the issues clearly in his favor. (The original is on file with the Clerk of the Circuit Court.)

EXHIBIT "A".

ROOSEVELT UNIVERSITY
430 South Michigan Avenue
Chicago 5, Illinois

Office of the President

September 5, 1961

Mr. Abraham Teitelbaum
506 North Rexford Drive
Beverly Hills, California

Dear Sir:

The attached receipt is a true and correct photo-copy from the original that is in our files which shows that the interest payments of $2,500.00 each totaling $7,500.00 were applied on principal in lieu of interest during 1949.

Very truly yours
/s/ Mary L. Soroda
Secretary to
President Edward J. Sparling

October 31, 1949

This is to acknowledge the receipt of One Hundred Ninety Thousand Dollars ($190,000.00) by Cashier's check number S64712 and further acknowledge the receipt in February, May, and September, 1949 of interest payments of Twenty Five Hundred Dollars ($2,500.00) each which sums are applied on principal in lieu of interest, totalling One Hundred Ninety Seven Thousand Five Hundred Dollars ($197,500.00) in full satisfaction and accord of the present Two Hundred Fifty Thousand Dollar ($250,000.00) First Mortgage indebtedness of the Roosevelt College on the north 52 feet of Auditorium Building now occupied by Roosevelt College.

/s/ Abraham Teitelbaum

Accepted:
Roosevelt College
By s Edward J. Sparling
President

(Photocopy on file with Clerk of the Circuit Court.)

IX.

CHICAGO RESTAURANT ASSOCIATION GIFTS.

The payments that were made to petitioner met all requirements of the law of gifts. During the years that $2,000 were permitted as a gift without the payment of a tax thereon, only that amount was given per year. When the permitted amount was increased to $4,000, that was the amount given. This was the design and purpose of the Restaurant Association in giving the gifts.

A year-by-year comparison of these gifts, with that of the compensation paid to petitioner by the Restaurant Association, will convince this Court, that the amount of compensation paid by the Restaurant Association, as it was increased from time to time, bears no relation state to the amount of the gift paid in each year.

X.

RECAPITULATION

First Tax Case

Petitioner Paid Under Protest	$3,000.00
Tax Expert's Testimony, Money Due	$ 29,279.78
Tax Court Admits Overpayment Less	$ 10,125.83
Money Due Petitioner, Overpayment	$324,846.05

Present contention by respondent that no partnership existed.

Second Tax Case

No money is due respondent because:

1. No examination of books and records as admitted by agent of respondent.

2. Penalties provision for estimated taxes is unconstitutional.

XI.

PETITIONER IS ENTITLED TO THE EQUAL PROTECTION OF THE LAWS.

Petitioner respectfully contends that he is entitled the equal protection of the laws.

Petitioner's partner, Mr. Paul R. Simon, had a tax case in the Tax Court of the United States, for the years 1946 and 1947 based on almost the identical facts, and the Trial Judge was advised that Paul R. Simon settled his tax case by compromise with Respondent for $33,000 which was approximately 15% of his total liability. (Tr. p. 1357.)

Shall Mr. Simon settle his tax problems at 15% and Petitioner be penalized because of his co-operation?

The Internal Revenue now states: (1960)

> "Upon examination of the partnership it has been determined that Esther Melnick Teitelbaum has not been a partner in fact since 1945 and that all the income from the alleged partnership is taxable to Abraham Teitelbaum." Tr. p. 1438.

This is the tenth switch of theories on Respondent's part in order to justify unjust Jeopardy Assessments.

In case of *Hamilton* v. *Regents*, cited in 293 U.S. 245, the Court said, on p. 216:

"The 'privileges and immunities' protected are only those that belong to citizens of the United States as distinguished from citizens of the States."

"Those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources."

Since Esther Melnick Teitelbaum's purported taxes for the years involved, amounting to approximately two hundred thousand dollars was paid by Petitioner, why isn't he given, now, a refund for said amount upon this recent ruling of Respondent?

In *Stirone* v. *United States*, cited in 361 U.S. 212 the Court held on page 217.

"Although the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same."

"While there was a variance in the sense of a variation between pleading and proof, that variation here destroyed the defendant's substantial right to be tried only on charges presented in an indictment returned by a Grand Jury. Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless error."

On page 219 the Court further said.

"Yet because of the Court's admission of evidence and under its charge this might have been the basis upon which the trial jury convicted petitioner. If so, he was convicted on a charge the Grand Jury never made against him. This was fatal error. Reversed."

In the case at bar, the variance between the indictment and the bill of particulars was a fatal one. *And now in*

1960 the Respondent admitting that no partnership existed since 1945, actually renders the conviction a nullity.

The giving of instructions that a partnership existed, and permitting the Jury to find the defendant Guilty of same, allowed the Government to try defendant on another theory. This cannot be done under our laws of American Jurisprudence.

XII.

SECTION 58, I.R.C. IS IN CONTRAVENTION WITH THE 16TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND IS THEREFORE UNCONSTITUTIONAL.

Section 58 (a) (2) I.R.C. provides for a tax on estimated income, which is merely a wish or conjecture on the part of the taxpayer.

The 16th Amendment of the United States Constitution provides

> *"The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several states and without regard to any census or enumeration."*

It is petitioner's contention that "income" includes everything that is of a tangible value already realized by the taxpayer and must exist at the time of filing taxpayer's return.

In *Helvering* v. *Horst*, 61 Supreme Court Page 144; 311 U. S. 112 reversing *Horst* v. *Commissioner of Internal Revenue*, 107 Fed. (2) P. 906 the Court said:

> "The realization of income, rather than the acquisition of the right to receive it, is the taxable event and is not deemed to occur until the income is paid, but not all economic gain of taxpayer is taxable income."

"Income" has been described as, gain derived from capital, labor, or from both combined, and must be new property acquired or increment detached from former investment and to be taxable by Congress under the 16th Amendment must have been received.

Trust Company of Georgia v. *Rose*, 25 F (d); 997, affirmed *Rose* v. *Trust Company of Georgia*, 28 F. (2d) 767; *North Texas Lumber Co.* v. *Commissioner of Internal Revenue*, 30 A (2d) 680; *Maryland Casualty Co.* v. *U. S.*, 40 S. Ct. 155, 251 U.S. 342, 64 L. Ed. 297; 37 F. Supp. 217, 37 F. Supp. 811; *Eisner* v. *Macomber*, 40 S. Ct., 189, 252 U. S. 189.

Taxes on income accrue at the end of the year and not from day to day, *Blair* v. *W. G. Ragley Lumber Co.*, 30 F. (2d) 683 and are laid on the basis of actual fact and not on theories, *Haagh & Keenan Storage & Transfer Co.* v. *Heines*, 20 F (2d) 921.

The estimated income as provided in Section 58 (a) (2) is not anything in existence at the time petitioners are required to file their estimation form. To be taxable income under the 16th Amendment of the United States Constitution, it must not only exist but be realized at that time. The estimation for a future income is speculative, a conjecture, a desired wish. It is merely theorizing on a future event such as gambling with tax payers' opinion. Funk and Wagner's dictionary defines that speculation is a mere conjecture which is a formal opinion. It was not the intention of the founders of these United States and the Congress to pass laws of a speculative nature. In *Ex Parte Quinn* 63 S. Ct. 2, it was said:

> "Congress and the president like the Courts possess no power not derived from the Constitution."

The foundation of our democratic form of government is based primarily on the Constitution of the United States and its amendments and all powers of government are derived therefrom.

In *Marbury* v. *Madison*, 1 Cranch, 137, the Court stated "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected." "This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by these departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited."

John Marshall, in the Virginia Convention of 1788, declared, "If they (the legislature of the United States) were to make a law not warranted by any of the powers enumerated, it would be construed by the judges as an infringement of the Constitution which they are to guard. They would declare it void." James Wilson, in the Pennsylvania Convention of 1787 declared "To control the power and conduct of the legislature, by an overruling constitution, was an improvement in the science and practice of government reserved to the American States."

Petitioner find no provision in the Constitution of the United States of America wherein the Congress has any right or authority to compel or to control by legislation the right of the people to think or to compel them to speculate on future events.

The 16th Amendment of the Constitution did not extend taxing power of the United States to new subjects.

Bunn v. *Willenta*, 29 F (2d) 132.

Whether Or Not The Penalties Under Section 294 (d) (1) (A) and 294 (d) (2) I.R.C. Are Harsh, Confiscatory And Unconstitutional.

Section 294 (d) (1) (A) and 294 (d) (2) provide for penalties for the taxpayer's failure to file an estimated income within the specified time as provided under Section 58, I.R.C.

Petitioner contends that these sections of I.R.C. are repugnant to the Constitution of the United States in that they provide an excessive penalty for failure to file under Section 58 I.R.C. It also follows that if Section 58 I.R.C. is contrary to the 16th Amendment of the Constitution of the United States, then all penalties thereunder would be illegal and unconstitutional.

They are repugnant to the first Amendment of the Constitution in that they command the individuals, regardless of their religious or moral convictions by means of a written document made under oath, to prognosticate, speculate, bet, estimate on the future results of any and all financial activities they may engage in, and believe that they are correct within eighty per centum of their estimation in fulfilling that oath.

These sections are contrary to the 7th Amendment of the Constitution in that the penalties amount to over $20.00, and it deprives the taxpayers of their right to a trial by a jury.

These sections give the commissioners the power to arbitrarily penalize and assess the tax payers through their administrative functions and they are further un-

constitutional in that it substitutes and confers the judicial powers on the commissioner. It is contrary to all intent and purpose of the Constitution of the United States of America to penalize petitioner for his failure to speculate on what his future eranings might be and more particularly in his case where he has no direct control over gross income and his records are often delayed for weeks before being received by him.

Because petitioner herein failed to speculate on a future income, over which he has no control and which varies greatly from year to year, the Commissioner has assessed a penalty under Sections 294 (d) (1) (A) and 294 (d) (2) contrary to the Constitution of the United States of America and in manner of computation contrary to all facts pertaining to actual earnings. Therefore no liability or penalty should be chargeable to petitioner. Appendix D(3).

RESPONDENT'S INCONSISTENT THEORIES.

At one time or another, the Respondent has made various inconsistent theories of tax responsibility against Petitioner. They are:

1. Petitioner is liable for the tax.

2. Petitioner is not liable for the tax, but liability is to the Tyted Co., a Corporation. (Joint Exhibit 3c Par. 7)

3. The tax liability was that of his partner, Esther Melnick Teitelbaum. (Tr. of Rec. 1411)

4. The Tyted Co. was a naked trust, and all taxes that could have been assessed to the Tyted Co. were assessed to Abraham Teitelbaum, and have been fully paid (Exhibit #29CC, 30DD, 31EE.)

5. The Bill of Particulars states that the Tytel Co. still owes taxes. (Joint Exhibit 3C) (Tr. of Rec. 700)

6. Theory of constructive dividends. (Disallowed by Tax Court)

7. Wife liable as transferee. (Tax Court Decision cancelling Tax)

8. New Theory of alternate tax liability presented to tax court. (Amended pleading filed in 2nd Tax case.)

9. The existence of a partnership. (Exhibit 4D Vol. 2 page 5)

10. The non-existence of a partnership. (Tr. of Rec. 1438)

In both indictments, Bills of Particulars, pleadings and even the instructions to the Jury, a partnership entity between Abraham Teitelbaum and Esther Melnick was charged to be in existence by Respondent. (Exhibit 4D Vol. 2 page 4)

Now, in August 16, 1960, the Internal Revenue Service stated: (Tr. p. 1375.)

1. "Esther Melnick Teitelbaum (the taxpayer's former wife) has not been a partner in fact or by law since 1945, and all the income from the alleged partnership, Teitelbaum and Melnick is taxable to Abraham Teitelbaum." Appendix D(1)

2. Forms for extension of statute of limitation to examine records sent to taxpayer after assessment. (Exhibit furnished to Circuit Court. Appendix D(2)

3. Only facts appearing on face of returns as to deductions were disallowed by respondent arbitrarily. This outlaws fraud.

4. Arbitrary assessments against petitioner made to cloud the real issues, prevent a refund, and deprive him of a livelihood, together with his present constant harrassment by respondent's agents only accentuate the real facts.

XIII.

REASONS FOR GRANTING WRIT.

1. The decision below affects every taxpayer in the United States.

2. The decision below is clearly erroneous.

3. The decision below presents continuing questions of importance under present tax laws.

4. There is a real necessity for judicial interpretation of existing tax laws to prevent undue hardships and grant every taxpayer the equal protection, and due process of law.

The Constitutional questions of law involved, upon which petitioner seeks a review of the decisions of the lower Courts are in the main the basic and fundamental principles of law embodied in the Bill of Rights governing our American way of life.

The paramount question is "Can the Internal Revenue Dept. levy a tax on any individual without first examining the books and records of that person?" Is it possible by some erroneous principle of concept the Internal Revenue Dept. believes it to be above the law?

This is exactly what somebody representing the Internal Revenue Dept. did, and still are trying to do,—to impose a tax of X dollars on petitioner without any examination of the available books and records of petitioner and under the guise of authority has unlawfully used the instrumentalities of the Courts to destroy him as a citizen and deprive him of his Constitutional rights guaranteed under the Constitution of the United States.

CONCLUSION.

In each and every one of the foregoing sections, petitioner has attempted to point out, specifically, matters and things that the Circuit Court has overlooked and/or misapprehended.

Fundamentally, all support the contention of the petitioner, that what has been accorded to him, since the commencement of his tax involvements, since 1946, illustrates the maxim so well: "the power to tax is the power to destroy". It is his belief, supported by the record before this Court, as well as all of the consequences that have flowed therefrom, that the power to tax has been used to destroy him, as a person, a citizen, an attorney and as a payer of taxes in substantial amounts.

So long as the overzealousness of the respondent, with his vast assets of governmental power, manpower of agents and accountants, and financial resources, is permitted to direct his efforts toward the destruction of an individual, rather than toward the just collection of taxes in the amount justly due, is permitted, just that long is every citizen, including the petitioner, as each becomes the target, in the dangerous situation of being accorded treatment not only violative of "due process", but also equally violative of the "privileges and immunities", and "equal protection" guaranteed to every citizen.

No one can disagree with the principle, violated herein, "that none shall be destroyed under the guise of collecting the income tax." On that proposition, this case is bottomed, and petitioner seeks a reversal of the Circuit Court.

Mr. Justice Oliver Wendell Holmes in his book on Taxation stated," I love to pay taxes, with taxes I buy civilization". It is respectfully urged that the late Justice meant that everybody should pay only their just taxes and not oppressive and illegal ones.

The gambling on future estimate of income is illegal, unconscious, and unconstitutional.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

ABRAHAM TEITELBAUM, *petitioner,*
Attorney pro se.

APPENDIX "A".

OPINION OF U. S. CIRCUIT COURT OF APPEALS
dated August 24, 1961

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1960—APRIL SESSION, 1961

No. 13150

ABRAHAM TEITELBAUM, *Petitioner,*
v.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Petition to Review Decision of the Tax Court of the United States.

August 24, 1961

Before HASTINGS, *Chief Judge*, and MAJOR and KNOCH, *Circuit Judges*.

KNOCH, *Circuit Judge*. Petitioner, Abraham Teitelbaum, seeks review of decision by the Tax Court which reversed in part and affirmed in part determinations made by the Commissioner of Internal Revenue, respondent herein.

On behalf of himself and his partner, (his first wife, Esther Melnick Teitelbaum) the petitioner paid a jeopardy assessment in excess of $340,000 including taxes, interest, penalties and costs, for the years 1944 through 1948. In 1955, there was another jeopardy assessment against peti-

tioner for the years 1949 through 1951. Mr. Teitelbaum's petitions for re-determination of both assessments were consolidated for trial.

Mr. Teitelbaum lists the contested issues as follows:

1. The trial Court Judge Russell E. Train should have in good conscience informed Petitioner at the start of the hearings of the consolidated petitions for tax redetermination, that he was the minority member of the King Congressional Committee in 1951 investigation of Income Tax Irregularities in which proceeding Petitioner was a main witness, who thought it was his civic duty to give testimony in which he was an intended victim of a $500,000 extortion plot.

Had Judge Train, at the start of the proceedings, made a statement as to his being a member of the minority group of the King Congressional Committee, or an attorney on the Staff of the Joint Committee *on Internal* Revenue taxation, then his statement having been made, it would have been up to Petitioner either to exercise his Constitutional prerogative to ask or not to ask for a change of venue. (Tr. pp. 1387, 1430),

On pages 1923 of the Tr., Petitioner called to the Court's attention his participation as a witness before the King Congressional Committee. This remark was made in Petitioner's opening statement to the trial Judge. (Tr. p. 148)

2. The majority of the rulings of the trial Judge were erroneous in law and not based on the evidence.

3. The rulings of the trial Judge in favor of Petitioner did not result in the return of any money paid under protest, because of his ruling in the second tax case.

4. The burden of proof of fraud, being on Respondent, the same was not discharged.

5. The trial Judge failed to honor the stipulations of facts filed in the cases. (Tr. pp. 127 to 145 Incl.)

From the record it appears that Judge Russell E. Train, who heard this case in the Tax Court, was an attorney on the staff of the Joint Committee on Internal Revenue Taxation and never a member of the staff of the King Subcommittee. Judge Train was a mere spectator to Mr. Teitelbaum's testimony as a witness before the King Subcommittee, and took no position adverse to Mr. Teitelbaum. Mr. Teitelbaum, himself, stated in the Tax Court hearing:

> I am perfectly satisfied with your Honor. I certainly wouldn't have asked for a change of venue * * * Tr. 1398)

The record affords no support for any finding of disqualifying personal bias or prejudice. *Tucker v. Kavanagh*, 7 Cir., 1950, 186 F. 2d 79.

While Mr. Teitelbaum was counsel for the Chicago Restaurant Association, he received certain sums which he characterized as Christmas bonus gifts and which he did not report as taxable income. Whether these sums were gifts exempt from tax or were taxable compensation presents a question of fact. If the payments proceeded primarily from the constraint of a moral or legal duty, they were not gifts. *Bogardus v. Commissioner*, 302 U. S. 34, 41 (1937). The minutes of the Chicago Restaurant Association disclose the motive for the payments. The minutes indicate:

> * * * at this time of the year we usually consider the matter of a Christmas Gift to Mr. Teitelbaum to cover additional expenses which he incurs. (Exh. 9Q

In a letter from the Executive Vice-President of the Association, Mr. Teitelbaum was advised:

> In the past years, * * * you received sums of money at or about Christmas each year. * * * While the latter was in the nature of a gift, it was intended to augment your expense account * * * You have always advised us that the expenses we gave you, in addition to the basic retainer, was not sufficient. (Exh. 3S

The Tax Court's finding that the Christmas bonus gifts were compensation is not clearly erroneous and must stand. Federal Rules of Civil Procedure, Rule 52(a).

It was stipulated between the parties that (Second Supplemental Stipulation of Facts):

> 23. The partnership return of Teitelbaum and Simon for the year 1950 claimed a deduction for the conversion of electricity in the Fine Arts Building from D.C. to A.C. This conversion was done pursuant to an ordinance of the City of Chicago.

Mr. Teitelbaum deducted the cost of this conversion (almost $80,000) as an ordinary and necessary expense paid or incurred during the taxable year in which it occurred. It was Mr. Teitelbaum's contention that the conversion added nothing to the value of the building, although his architect, on cross-examination, did state that he would advise a buyer who contemplated the purchase of a building in which such conversion was required by ordinance and had not yet been made, to take the cost of such conversion into consideration in arriving at a purchase price.

The Tax Court held that the electric conversion was a capital expenditure which must be amortized out of the income from the years of its useful life. Mr. Teitelbaum argues that the Tax Court thus ignored the stipulation quoted above. We find no contradiction between the stipulated facts and the Tax Court's finding. The mere fact that the conversion was involuntary and made only to comply with a city ordinance does not render it an ordinary expense. Involuntary modifications made to comply with orders of municipalities or regulatory bodies have been held to be capital items and not deductible expenses. Even though they may not improve the property by increasing its attractive appearance or efficiency, or prolonging its life, such modifications do render the property more valuable for the taxpayer's use by bringing the property into compliance with applicable regulation. *Parkersburg Iron* v. *Burnet*, 4 Cir., 1931, 48 F. 2d 163, 164, 165; *R.K.O. Theatres, Inc.* v. *United States*, Court

of Claims, 1958, 163 F. Supp. 598, 602; *Woodrich Woolen Mills v. United States*, Dist. Ct., M.D. Pa., April 19, 1961 ..... F. Supp. .....

In 1948, Mr. Teitelbaum and his first wife acquired property near Indio, California, which included a date ranch and residential facilities. The Tax Court found that out of a total consideration of $127,372.09, at least $88,872.09 was allocable to the residence and related improvements, which included a main house with a high ceilinged, two fireplace living room of 45 x 60 feet, a guest house, swimming pool, pool house and servants' house. About $21,000 was allocated to the land and $17,500 to the trees and related improvements. There were also a caretaker's house, a house for the farm laborers, 300 date trees covering about six to seven acres, and about two and one-half acres of grapefruit. Mr. Teitelbaum asserts that the date ranch was never intended to be a recreational hobby but was conducted as a separate business enterprise which, in the hands of his predecessor, had earned a profit of as high as $45,000 in one year. However, that predecessor had informed Mr. Teitelbaum that during the years following World War II, the price of dates declined, and that an overall loss had resulted for the most recent year, which would be claimed by the predecessor as a business loss for tax purposes. Mr. Teitelbaum had also sought information from the Date Growers' Association in California. In 1947, domestic date prices were declining, partly because of newly begun importation of dates from abroad.

The absence of a profit motive is significant in determining whether an enterprise is conducted as a business. *White v. Commissioner*, 6 Cir., 1955, F. 2d 779, cert. den. 351 U. S. 939. Where a taxpayer derives substantial income from other occupations, the size and character of his regular business, of the farm, its operation and records, his time and effort expended, and the nature of the residential facilities, are all elements in determining whether the taxpayer is conducting a business venture for profit or

cultivating a farm as an adjunct to a country residence. *Morton* v. *Commissioner*, 2 Cir., 1949, 174 F. 2d 302, cert. den. 338 U. S. 828; *Coffey* v. *Commissioner*, 5 Cir., 1944, 141 F. 2d 204.

Mr. Teitelbaum was allowed to deduct his losses from this operation in 1948, and he contends that no change in operation occurred for succeeding years. The first Mrs. Teitelbaum used the big house and its related buildings as her major residence from the time of its acquisition and continuously after her separation from Mr. Teitelbaum in 1949.

The Tax Court found that no adequate records were maintained for the date ranch, the substantial residential expenses being commingled with those of the farming operation. The Tax Court characterized Mr. Teitelbaum's evidence in this regard as "a mass of unsorted cancelled bills." No effort had been made to segregate them. The evidence supports the Tax Court's conclusion that no attempt had been made to put the ranch on a paying basis, that Mr. Teitelbaum devoted little time to the operation and exercised no managerial responsibility after separating from his wife in 1949. In *Field* v. *Commissioner*, 26 B.T.A. 116 (1932) affirmed 2 Cir., 1933, 67 F. 2d 876, and in *Security First National Bank of Los Angeles* v. *Commissioner*, 28 B.T.A. 289 (1933), on which Mr. Teitelbaum relies, there was a complete separation of the residence and farming facilities in both accounting and operation, and a business-like effort to conduct a profit-making venture. Although Mr. Teitelbaum asserts that he acquired the property in hopes of securing gains, there was no basis for a finding that he had a good faith intention to operate the date ranch as a business venture for profit.

On May 31, 1944, the Tyted Company was incorporated under the laws of the State of Illinois. Mr. Teitelbaum was its initial registered agent. The total authorized stock was 1000 shares. On June 2, 1944, the corporation issued 1000 shares of its capital stock. Nine hundred ninety-nine shares went to Mr. Teitelbaum and his first wife, Esther Melnick Teitelbaum, as joint tenants. They paid no consideration for the stock. The remaining share went to Josephine Melnick. The ownership of the capital stock remained unchanged through December 31, 1947. The Tax Court found that on April 24, 1945, the corporation acquired record title to the Fine Arts Building and portions of the Auditorium Hotel and Theatre, in Chicago. The corporation's actual interest was an undivided one-half interest with beneficial ownership of the other undivided one-half interest in Paul R. Simon or Bessie L. Simon. On May 1, 1945, the corporation conveyed title to the La Salle National Bank, as trustee, with power of direction vested in Mr. Teitelbaum and Mrs. Esther Melnick Teitelbaum. The trust agreement provided that the beneficial interest in the properties was in Tyted Company. On February 27, 1947, the corporation sold to Roosevelt College its beneficial interest in the Auditorium Hotel and Theatre portions of the property, and the trustee conveyed the legal title to the College. The consideration consisted of checks dated February 6, 1947, in the amount of $10,000 and February 27, 1947, in the amount of $142,000 and a promissory note payable to bearer in the face amount of $250,000, which was valued at $200,000 according to the tax return for 1949 to which reference is made below.

On May 1, 1947, the corporation assigned its interest under the trust, which purported to be the entire beneficial interest in the Fine Arts Building: an undivided one-half to Bessie L. Simon and an undivided one-half interest to Mr. Teitelbaum and Mrs. Esther Melnick Teitelbaum.

During 1949, Mr. Teitelbaum received three interest payments of $2,500 each on Roosevelt College's note. He was then negotiating with the College for the sale of the note, which was in fact sold that same year, and for which Mr. Teitelbaum received an additional $190,000. He reported the selling price as $197,500 in the tax return for 1949 [Exh. 23] but reported no interest for that year. He explained in the capital gains schedule that the three $2,500 payments, originally treated as interest, were, on closing the sale, to be treated as principal in accordance with an agreement of seller and purchaser. However, no other evidence of this agreement was introduced. Mr. Teitelbaum testified that the agreement had been evidenced by a letter which was lost among his files. He promised [Tr. 885] to produce the original or a copy of it. It does not appear that it was ever produced. Thus the determination of whether the interest payments were by agreement converted to principal rested on the Tax Court's evaluation of Mr. Teitelbaum's credibility on this point. The Commissioner's investigation had disclosed no knowledge of this agreement on the part of the Roosevelt College authorities. The Tax Court found that the note was sold for $190,000 and that the three earlier payments of $2,500 each did constitute interest payments. That finding is not clearly erroneous.

In 1951, Mr. Teitelbaum acquired the stock of Metropolitan Radio Corporation of Chicago (which operated radio station WMOR) from various persons, including two officials of the Chicago Restaurant Association, at about ten cents on the dollar. On the joint individual partnership income tax return filed by Mr. Teitelbaum and Mrs. Esther Melnick Teitelbaum, the following loss was claimed:

> RADIO STATION W.M.O.R.:
> I advanced the sum of $71,213.18 to discharge the payroll debts, rent, taxes due to the government for Social Security and Withholding taxes of F.M. Radio Station, operated by myself. The corporate name was

merely retained as a legal convenience and the station was never operated as a corporation. No income was received and funds were advanced by myself personally all $71,213.18

The Tax Court found that $22,269.88 of the $71,213.18 claimed by Mr. Teitelbaum represented items which did not constitute expenses of WMOR, and the items totalling $20,901.94 had been previously deducted on tax returns. The Tax Court did conclude that at least $48,289.83 had been advanced by Mr. Teitelbaum to pay expenses of Metropolitan Radio Corporation of Chicago.

In 1952, Metropolitan Radio Corporation of Chicago was the subject of a petition in bankruptcy. On April 18, 1952, Metropolitan was adjudicated bankrupt. The list of claims filed in the bankruptcy included Mr. Teitelbaum's claim for loans in the amount of $71,213.18. However, except for the fact of the bankruptcy in 1952, no evidence of the uncollectibility of the advances made by Mr. Teitelbaum was submitted to the Tax Court. From the evidence adduced before it, the Tax Court could not find that the loss occurred in 1951.

In Mr. Teitelbaum's view he met all conditions to his right to deduct certain travel and hotel expenses which were disallowed by the Commissioner. Mr. Teitelbaum avers that he was conducting two business: a ranch in Indio, California, (on which we have heretofore commented) and a law practice in Chicago, Illinois. He argues that his expenses, evidenced by vouchers, receipts, and air travel tickets, were reasonable and necessary, incurred while away from home, directly connected with his businesses and appropriate to them. The evidence to which he refers included receipts for expenditures made while in Chicago. Mr. Teitelbaum states that he owned no home in Chicago from 1947 until 1952, and during that period he resided at a Chicago hotel.

He did travel to Miami, Florida, where his second wife lived, and to Indio, California, where his first wife and family resided. There is no evidence to indicate any busi

ness conducted in Florida. We agree with the Tax Court that Mr. Teitelbaum did not support the burden of showing that the date ranch was a venture operated in good faith for profit. There is nothing in the evidence to show that Mr. Teitelbaum made these trips for any purpose other than to visit his relatives. We conclude that the Tax Court properly found no deductible travel or hotel expense beyond that already allowed by the Commissioner.

It is not disputed that the burden of proving fraud rested on the Commissioner. Mr. Teitelbaum takes the position that the Tax Court presumed fraud from mere negative evidence. Fraud is a question of fact. We may not set aside the Tax Court's findings of fraud unless we find them unsupported by substantial evidence and clearly erroneous. *Jaeger Motor Car* v. *Commissioner*, 7 Cir., 1960, 284 F. 2d 127, 129. The taxpayer's consistent and substantial understatement of income over a period of several consecutive years, considered in the light of all the attendant circumstances, was clear and convincing evidence of fraud. *Bender* v. *Commissioner*, 7 Cir., 1958, 256 F. 2d 771, 774. The Tax Court found substantial sums which had been distributed to Mr. Teitelbaum, out of the operations of the Douglas and Fine Arts Buildings in Chicago, were not reported as income. Mr. Teitelbaum directed the agency in charge of the buildings to issue letters to him to evidence the amounts which had been paid to him, to his partner, and to the Tyted Company. At his direction, these letters did not reflect amounts which had been disbursed out of the building agency accounts, (on Mr. Teitelbaum's instructions) which were not normally part of the operating expenses of the buildings, and which were reflected on the agency's statements as distribution of income to the owners of the buildings. In reporting net capital gain from the sale of the Douglas Building, Mr. Teitelbaum included an expense item of $200,000 as expenses not theretofore deducted. The evidence adduced before the Tax Court demonstrated that many of the items included in that total had previously been deducted.

The $200,000 item appears on a page of the tax return prepared by Mr. Teitelbaum personally and added to a schedule of cost data on a prior page of the return which had been prepared by Mr. Teitelbaum's attorney. The Tax Court was satisfied after hearing the testimony that Mr. Teitelbaum had prepared the addition to the return with knowledge of its falsity and with intent to evade tax.

We have drawn a few examples at random from a voluminous record which support the Tax Court's finding that the Commissioner established by clear and convincing evidence a pattern of conduct amounting to fraud with intent to evade tax. This conclusion is amply supported by the record without recourse to the additional evidence of Mr. Teitelbaum's criminal fraud convictions.

We have carefully considered all the other issues involved in this case and the various arguments advanced on behalf of Mr. Teitelbaum. It would unduly extend this opinion to no good purpose to comment on each individually. We have found no merit in the petitioner's contentions. The decision of the Tax Court is affirmed.

MAJOR, *C.J.*, concurring in part and dissenting in part.

I concur in and approve of the majority opinion, except as to the item (almost $80,000) expended in the Fine Arts Building for the conversion of electricity from direct current (DC) to alternating current (AC). The Court sustains the Tax Court in its conclusion that this was a capital expenditure rather than "an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business * * *." With this conclusion I do not agree.

I agree that the fact that conversion was required by an ordinance of the City of Chicago is not determinative of the issue. It does, however, remove any doubt but that the expense was necessary. There remains the question as to whether it was ordinary. It has been held that an

expense to be ordinary need not be of frequent occurrence but may occur only once. *Welch* v. *Helvering*, 290 U.S. 111, 114; *Deputy et al.* v. *du Pont*, 308 U.S. 488, 495.

The weakness of the Commissioner's position is demonstrated by his brief. In his statement of facts he relies upon the finding of the Tax Court, "Although the conversion did not increase the value of the building as such, it did affect the amount which a buyer would be willing to pay for the building." I am not able to comprehend how it can be found that the value of the building was not increased and at the same time say that it could be sold for more money. Neither can I accept the argument, made here by the Commissioner, that the conversion increased the market value of the building in face of the finding that its value was not increased. The taxpayer testified that the market value was not increased and his testimony was supported by that of a qualified architect and engineer. If the market value was increased, as now argued, testimony to that effect would have been readily available. None, however, was offered by the Commissioner. Moreover, the fact, if such it be, that a buyer would be willing after conversion to pay more for the building is no indication that the cost was a capital expenditure. The same contention with equal plausibility could be advanced whether the expenditure was for a necessary and ordinary expense or whether it was for a capital improvement.

A reading of the cases reveals the difficulty courts have had in deciding the question under consideration. Each case must depend largely on its own facts. *Jones* v. *Commissioner*, 242 F.2d 616, 620. In that case, the Court quotes from the Board of Tax Appeals as to the distinction between deductible repairs and non-deductible disbursements as follows (page 619):

> "'A repair is an expenditure for the purpose of keeping the property in an ordinarily efficient operating condition. It does not add to the value of the property, nor does it appreciably prolong its life. It merely keeps the property in an operating condition

> over its probable useful life for the uses for which it was acquired. Expenditures for that purpose are distinguishable from those for replacements, alterations, improvements or additions which prolong the life of the property, increase its value, or make it adaptable to a different use.'"

In the instant case, the expenditure was for the purpose of keeping the property in an operating condition, did not add to its value (according to the finding of the Tax Court), did not appreciably prolong its life and did not make it adaptable to a different use.

Two cases, much relied upon by the government and cited in the majority opinion, are *RKO Theatres, Inc.* v. *United States*, 163 F. Supp. 598, and *Woolrich Woolen Mills* v. *United States*, decided April 19, 1961, by the Court of Appeals for the Third Circuit. The former case, written for the Court of Claims by Justice Reed (retired), reviews many cases and is often cited. In that case, the taxpayer in compliance with law provided new exit facilities and fire escapes from its theatre. The Court sustained the Commissioner's holding that the expenditure was for a capital improvement. In distinguishing cases relied upon by the taxpayer, the Court stated (page 602):

> "The addition and changes were not in any sense a repair or replacement of existing facilities. They were permanent changes designed to make it possible to carry on a business for profit."

In the instant case, the conversion was only the replacement of existing facilities and was not designed to make it possible to carry on a business for profit. That was already being done. On the same page, the Court stated:

> "This was not a repair, 'a substitution of new parts or restoration of certain parts of a given whole,' but a capital improvement made to increase the value of the property for use in the taxpayer's theatre business."

Again, in the instant case, there was only a substitution of new facilities for the old, not an improvement designed to increase the value of the building for the use to which it was put.

The *Woolrich* case is also distinguishable on its facts. There, the expenditure was for a filtration plant, constructed in compliance with a state law, for treatment of waste from a woolen mill. The plant consisted of a building with its contents located approximately one-third of a mile from taxpayer's mill. The Court in holding this to be a capital expenditure distinguished cases relied upon by the taxpayer as follows (page 8, slip opinion):

> "Those cases involved outlays of moneys for alterations of existing structures which, on the facts present in those cases, the Tax Court held to constitute repairs. We are not confronted here with a similar situation."

The situation which did not exist in that case is present here where there was the alteration of an existing structure and the substitution of a new facility for the old which served the same purpose without increasing the value of the building or the taxpayer's income derived therefrom.

I would hold that the conversion expenditure was a necessary and ordinary expense and reverse the Tax Court in that respect.

APPENDIX "B".

August 24, 1961

Decision of U. S. Court of Appeals.

"This cause come on to be heard on the transcript of record from the Tax Court of the United States and was argued by counsel.

On consideration thereof, it is ordered and adjudged by this Court that the Decision of the Tax Court of the United States entered in this cause on May 20, 1960 be and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day."

APPENDIX "C".

United States Court of Appeals

October 3, 1961

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

Certificate of the Clerk of the United States Court of Appeals for the Seventh Circuit.

Dated December 6, 1961

APPENDIX "D".

Exhibit "One" under Rule 18 of United States Court of Appeals photostat of letter of United States Treasury Department filed April 26, 1961 with Clerk of United States Court of Appeals in which

> "upon examination of the partnership, it has been determined that Esther Melnick Teitelbaum has not been a partner in fact since 1945 and all the income from the alleged partnership Teitelbaum & Melnick is taxable to Abraham Teitelbaum. Sec. 61 of the 1954 Internal Revenue Code.

Statement of Examining Officer

Proposed adjustments for year ending 1956.
Signed by Harry Ansell

Internal Revenue Agent
2nd Exhibit "Two" filed April 26, 1961 under Rule 18.

Form # 672

United States Treasury Department
(Revised August, 1956)

to extend period of limitations to June 30, 1958 to examine record of petitioner for year 1949.

Certified Exhibit "3"

Penalties

1st case
$45,028.33 twice
Plus 24,386.46
Sec. 293(b)—$99,931.83.
Sec. 294 (d)(1)(A)—$12,559.04.
and Sec. 394(d)(2)—$11,747.08.

transcript of Typewritten record page 7 as ordered by the United States Court of Appeals.

APPENDIX "E".

Character Witnesses before Chicago Bar Association.

By stipulation of counsel, the Commissioners permitted the respondent's Exhibit #13 to be introduced into evidence in lieu of calling men in public life who would testify as to the character and reputation of respondent.

The first signer, Leo Bartline, is a lawyer and former chairman of the Division of the Grievance Committee of the Chicago Bar Association.

The second signer is Julius L. Sherwin, a lawyer practicing law approximately 30 years and a former Assistant State's Attorney of Cook County. The third signer is William J. McGah, a Master in Chancery of the Superior Court. The fourth signer is a lawyer, Carrol Teller, who has practiced law over forty years. All the following signers are sitting Judges:

Daniel A. Covelli, Judge of Superior Court.
John A. Sbarbaro, Judge of Superior Court.
John J. Lupe, Judge of Superior Court.
Frank M. Padden, Judge of Superior Court.
Norman L. Eiger, Judge Municipal Court.
Julius H. Miner, Judge of the Circuit Court. (Federal Court).
Daniel A. Roberts, Judge of the Circuit Court.

Judge Otto Kerner of the County Court of Cook County voluntarily appeared before the Commissioners on behalf of respondent. He testified he was the United States District Attorney for the Northern District of Illinois, Eastern Division in 1948 to 1954. (At present Judge Kerner is the Governor of the State of Illinois). That he received a delegation of all the Directors of the Chicago Restaurant Association about August 1, 1952 and that these directors are all prominent men in Chicago and the purpose of the visit was to be informed whether or not their attorney, respondent herein, would be indicted after

he paid in full all the taxes, penalties and interests; that the Chicago Restaurant Association was about to lend respondent $35,000 to pay the balance due on his income taxes; that he told this delegation that respondent would not be indicted because the law cited in the guide for internal revenue agents and in Balter on Frauds under Federal Tax Law states that before any assessment notice is given any taxpayer, all criminal phases of a tax case are disposed; that in reliance upon this law he advised the Directors it would be safe to lend their counsel the money to pay the balance due in income taxes. He further stated that he was chagrined when the order for indictment came on January 21, 1953, one day after a new administration came in power; that shortly thereafter he sent his first Assistant U. S. Attorney to Washington, D. C., with a recommendation to *nolle prosse* this tax case against respondent.

APPENDIX "F".

Offer of Proof refused by Tax Court.

(Petitioner was Respondent)

First Offer of Proof.

Proposed witness, P. J. Boylan, subpoened as a witness for respondent, was denied the right to testify on the ground that his testimony goes behind the record of a conviction. Respondent contended that this testimony was relevant and admissible under the rules of evidence to refute the charge of moral turpitude, and to further prove respondent's innocence of any crime.

P. J. Boylan, if permitted, would testify as follows:

That his name is Percy J. Boylan, residing at 7314 South Crandon Avenue, in Chicago, Illinois; that he is 60 years of age and worked for the U. S. Treasury Department for over 25 years and that he is now retired; that he was the Internal Revenue Agent in charge of the income tax investigation of respondent for the years 1946-1947; that he first started investigation of all the books and records of respondent in 1947, which lasted to 1951; and that he found all the records and accounts of respondent to be true and correct; that he also examined and had examined under his direction the books and records of the Tyted Co., a corporation, and found the books and records were kept by a reputable real estate firm of Willoughby & Co., and that he found some mistakes which were the usual and customary ones made by thousands of corporations and individuals; that there was no wilful attempt on Taxpayer's part to evade the payment of any tax; that his office was prepared to settle the case on a 5% negligence penalty tax basis.

That in the early part of 1951 he was ordered by his superiors to close the case and forward same for prosecution. The attempted shakedown of Taxpayer and the King Committee hearings are part of the record.

That in December, 1951, Taxpayer received an assessment tax for 1946 and 1947 which he advised Taxpayer to pay, and he further told Taxpayer that the tax manual provided that before his office sends out an assessment, all criminal phases of a tax case are already settled.

That the indictment in 53 CR 36 was returned on January 21, 1953, the day after President Eisenhower was inaugurated President, and one day before Mr. Brownell was confirmed by the Senate as Attorney General of the United States; that this indictment was voted in haste without the testimony of this witness; and that the Grand Jury was not informed that all the taxes, penalties and interest were fully paid for the years involved; that this indictment was a complete miscarriage of justice; that the then District Attorney had written a memorandum to Justice Department refusing to indict respondent, and that in his opinion Taxpayer did not commit any crime; that witness knows that there was no examination of any books or records of Taxpayer for the years 1950 or 1951, which is the basis for the second indictment; that he believes respondent is completely innocent of the charges in both indictments; that both indictments are malicious and brought in bad faith; that he firmly believes Mr. Teitelbaum to be innocent and a victim of persecution.

SECOND OFFER OF PROOF.

Joseph Struett, a proposed witness for respondent, was denied the right to testify after being subpoenaed for respondent on the ground that his testimony would challenge the conviction in the case. However, respondent contends this witness would prove that the indictment was originated in bad faith and maliciously, as a result of a sinister plot, and that there was no moral turpitude in this case.

Joseph Struitt, if permitted, would testify that he is an attorney-at-law for over 30 years; that he was an Assistant U. S. Attorney in 1929-1932, and that in 1950 to 1953 he was the Chief Regional Counsel of the U. S.

Treasury Dept. in charge of fraud violations; that in the early part of 1951 he received the file of Abraham Teitelbaum, an attorney-at-law whom he knew for over 20 years; that he knew respondent to have a fine reputation as a lawyer, and that his integrity was above reproach; that the file had on its face the letter "R" for racketeer, which he seriously contested and refused to go along with said classification; that he reported to his superiors his objections; that a Mr. Whyte, a Treasury attorney, held a hearing in this case involving the taxable years of 1946 and 1947 and he found after hearings that taxpayer committed no fraud; that everything that taxpayer did was discernible by a mere cursory examination of the tax returns filed by respondent; that he was ordered to close his files in 1951 and forward same to Washington; that he knows of the King Committee reports in this case and of the attempted shakedown of respondent; that the indictment 53 CR 36 has its origin in bad faith and for bad motives, and in furtherance of a scheme to extort money from respondent; that this case is just one example which resulted in a complete reform movement in the Treasury Department; that he believes in his opinion respondent to be innocent and that no moral turpitude was involved.

APPENDIX "G".

Tax Court's Judicial
Notice of King Proceedings.

INTERNAL REVENUE INVESTIGATION.

Hearings Before a Subcommittee of the Committee on
Ways and Means
House of Representatives
Eighty-Second Congress.

Testimony of Richard C. Schwartz, Assistant Head of the Penal Division of the Bureau of Internal Revenue.

On page 1523—On Cross-Examination: (Congressional Record).

Mr. DeWind (Chief Counsel of Committee). Would that indicate that at that point you were not satisfied that the case was yet in shape to recommend prosecution?

Mr. Schwartz. Yes, sir. I was satisfied at that point that the racketeer classification should be cleared up and that the merits of the case should be further looked into with respect to items which I intended to advise Mr. Struett by memorandum and at that time told Mr. Oliphant briefly what those were.

• • •

Mr. Schwartz. Briefly I was concerned with respect to certain things which were shown on the face of the returns which were filed, which indicated to me that perhaps as to those items there had been no concealment because the returns had been received in the collector's office.

On page 1524.

Mr. Schwartz. I advised him (Mr. Struett) I wanted a further investigation, a further supplemental report from the Intelligence Unit relative to the investigation of Teitelbaum's activities as distinguished from rumor that he was engaged in illegal activities within the racketeer classification.

Mr. DeWind. Did you indicate that on the basis of the file as it was that this could not be a racketeer case?

Mr. Schwartz. Yes, sir, I did.

• • •

Mr. Schwartz. This was the only instance in which I had written a memorandum that had gone in the mails and had been called back.

Congressman Kean. He (Oliphant) would therefore seem to be extraordinarily interested in getting back those papers that you sent.

Mr. Schwartz. Yes, sir. I construed it as a cancellation of my memorandum, and that is what I did.

On page 1798. (Testimony of Charles Oliphant, former Chief Counsel for Bureau of Internal Revenue.)

"Up to the time within the past two weeks when Grunewald suggested to me that I not mention to this Committee his inquiry about the Teitelbaum case, • • •."

On page 1799.

Mr. DeWind. Then do I understand that later that day after you had inquired from Mr. Schwartz concerning the cases you called Mr. Grunewald and gave him the information?

Mr. Oliphant. I called him and gave him the information that they probably would not be called racketeers.

Mr. DeWind. In giving that information to Mr. Grunewald, was that a violation of Treasury policy against disclosing confidential information to unauthorized persons?

Mr. Oliphant. My own belief would be that it would not be.

On page 1808.

Mr. DeWind. Why did you decide 2 days later, after you had been advised there was not a sufficient case for prosecution, yet the case was sent back for further study, to call the files back?

• • •

Mr. Oliphant. I don't recall.

On page 1809.

Mr. Kean. Was that date when Mr. Grunewald made that request to you before the hearing here in public in which the Teitelbaum matter was brought up?

Mr. Oliphant. That was the night of the day before I resigned.

On page 1814.

Mr. Oliphant. Outside interference?

Mr. DeWind. That was the charge that was made—that the case was expedited for prosecution because of interference from the outside. In view of what happened after Mr. Grunewald called you about the case, is there any explanation or statement of reason you would like to give concerning your reasons for pulling the case back from the transmittal to Chicago?

Mr. Oliphant. I never heard of the two names until Mr. Grunewald made the casual inquiry.

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 636

ABRAHAM TEITELBAUM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 1280–1352)[1] are not officially reported.[2] The opinion of the court of appeals (Pet. App. 1a–14a) is reported at 294 F. 2d 541.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 1961, and the petition for rehearing was denied on October 3, 1961 (Pet. App. 15a). The petition for a writ of certiorari was filed on

[1] Record references are to the original record.

[2] The Tax Court findings and opinion have been separately printed and furnished to the Court. They shall be referred to as "T.C. Op."

December 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Tax Court's findings, sustained by the court of appeals, with respect to deficiencies in tax and fraud, are supported by substantial evidence and are not clearly erroneous.

2. Whether the record affords support for any finding of disqualifying personal bias or prejudice on behalf of the Tax Court judge.

3. Whether Section 58 and Section 294(d) of the Internal Revenue Code of 1939, which provide for the declaration of estimated tax by individuals and for additions to tax for failure to file such declaration or to pay installments of estimated tax or for substantial underestimation of estimated tax, are constitutional.

STATUTE INVOLVED

Sections 22, 23, 24, 58, and 294(d) of the Internal Revenue Code of 1939 are set forth in the Appendix, *infra*, pp. 19–28.

STATEMENT

This case involves multiple questions of fact with respect to deficiencies in income tax for the years 1944 through 1947 and 1949 through 1951; statutory additions to the tax for fraud for 1946, 1947 and 1951; and additions to tax under Section 294(d)(1)(A) of the 1939 Code (App., *infra*, pp. 25–26) for failure to file an estimated tax return for 1951 and under Section 294(d)(2) (App., *infra*, pp. 27–28) for substantial underestimation of estimated tax for 1950. The

facts were established in the Tax Court in part by stipulation and in part by extended hearings and numerous documentary exhibits. The Tax Court made detailed findings of fact (R. 1282–1341, T.C. Op. 2–44), and these findings were affirmed by the court below as supported by the record (Pet. App. 1a–11a).[3] The facts as found by the courts below are as follows:

Taxpayer and Esther Melnick Teitelbaum were husband and wife during the years 1944 to 1951, inclusive. Taxpayer resided in Chicago, Illinois, throughout the entire period. Esther Melnick Teitelbaum resided in Chicago until approximately the latter part of 1947, at which time she moved to California, where she resided continuously thereafter. During the years 1944 through 1951, taxpayer and his wife were attorneys at law, licensed to practice in the State of Illinois; they practiced as sole partners under the firm name of Teitelbaum and Melnick (R. 1282–1283, T.C. Op. 2–3).

1. During 1944 through 1947, while he was counsel for the Chicago Restaurant Association, taxpayer received certain sums which he characterized as Christmas bonus gifts and which he did not report as taxable income (R. 1311, T.C. Op. 22). According to the minutes of the Chicago Restaurant Association, the reason for these payments was that (Pet. App. 3a) "* * * at this time of the year we usually consider the matter of a Christmas Gift to Mr. Teitelbaum to to cover additional expenses which he incurs." More-

[3] Judge Major dissented as to one issue (Pet. App. 11a–14a), but concurred otherwise in the majority opinion.

over, in a letter from the executive vice-president of the Association, taxpayer was advised (Pet. App. 3a):

> In the past years, * * * you received sums of money at or about Christmas each year * * *. While the latter was in the nature of a gift, it was intended to augment your expense account * * *. You have always advised us that the expenses we gave you, in addition to the basic retainer, was not sufficient.

The court of appeals held that the Tax Court's finding (R. 1341, T.C. Op. 44), that the Christmas bonus payments were compensation, is not clearly erroneous and must stand (Pet. App. 4a).

2. During the years 1949, 1950 and 1951, Teitelbaum and Esther Melnick Teitelbaum were partners in a partnership known as Teitelbaum and Simon. Together they were entitled to 50 percent of the net income of the partnership. The partnership of Teitelbaum and Simon claimed a deduction of $79,951.66 on its 1950 income tax return for the conversion of electricity in the Fine Arts Building from direct current to alternating current. This conversion was accomplished pursuant to an ordinance of the City of Chicago. "Although the conversion did not increase the value of the building as such, it did affect the amount which a buyer would be willing to pay for the building." (R. 1315–1316, T.C. Op. 25–26.) Taxpayer's architect, on cross-examination, stated that he would advise a buyer who contemplated the purchase of a building in which such conversion was required by ordinance and had not yet been made to take the cost of such conversion into consideration in arriving at a

purchase price (Pet. App. 4a; R. 851–856). The Tax Court, sustaining the Commissioner, held (R. 1345–1346, T. C. Op. 47) that the electric conversion was a capital expenditure which must be amortized out of the income from the years of its useful life. The majority of the court of appeals affirmed (Pet. App. 4a–5a), Judge Major dissenting on this point alone (Pet. App. 11a–14a).

3. In 1948, taxpayer and his first wife acquired property near Indio, California, which included a date ranch and residential facilities, for a total consideration of $127,372.09. Of this amount, at least $88,872.09 was allocable to the residence and related improvements, including a main house with a high-ceilinged, two-fireplace living room of 45 by 60 feet, a guest house, swimming pool, pool house and servants' house. About $21,000 was allocated to the land and $17,500 to the trees and related improvements. There were also a caretaker's house, a house for the farm laborers, 300 date trees covering about six to seven acres, and about two and one-half acres of grapefruit. Although taxpayer asserted that the previous owner of the property had made a profit, taxpayer also had been informed that, during the years following World War II, the price of dates had declined and that an over-all loss had resulted for the most recent year which the previous owner would claim as a business loss for tax purposes. Taxpayer also had sought information from the Date Growers' Association in California. In 1947, domestic date prices were declining, partly because of the importation of dates from abroad, which had begun that year. (Pet. App. 5a; R. 1313–1314, T. C. Op. 23–24.)

Taxpayer realized a loss from the operation of this property during 1948 and deducted the full amount as a business loss on the partnership return filed for that year. Taxpayer's first wife, Esther Melnick Teitelbaum, used the big house and its related buildings as her major residence from the time of its acquisition and continuously after her separation from the taxpayer in 1949. No adequate records were maintained by either taxpayer or his first wife for the date ranch, the substantial residential expenses being commingled with those of the farming operation. The Tax Court concluded that no effort had been made to put the ranch on a paying basis and that taxpayer had devoted little time to the operation and had exercised no managerial responsibility after separating from his wife in 1949. Accordingly, the Tax Court sustained the Commissioner's determination that the taxpayer had not intended and did not conduct the operation of the date farm as a business for profit and that his losses from the operation were not deductible as business losses. The court of appeals affirmed. (Pet. App. 5a–6a; R. 1314–1315, 1344–1345, T.C. Op. 24–25, 46.)

4. On May 31, 1944, the Tyted Company was incorporated, and on June 2, 1944, it issued all 1,000 shares of its authorized capital stock, 999 shares to taxpayer and Esther Melnick Teitelbaum as joint tenants and one share to Josephine Melnick. Taxpayer and his wife paid no consideration to Tyted for the stock they received. The ownership of the capital stock of Tyted remained unchanged through December 31, 1947. On April 24, 1945, the corporation acquired record title to

the Fine Arts Building and portions of the Auditorium Hotel and Theatre, in Chicago. The corporation's actual interest was an undivided one-half interest with beneficial ownership of the other undivided one-half interest in Paul R. Simon or Bessie L. Simon. On May 1, 1945, the corporation conveyed title to the La Salle National Bank, as trustee. The trust agreement provided that the beneficial interest in the properties was in the Tyted Company, and the power of direction was vested in the taxpayer and Esther Melnick Teitelbaum. (Pet. App. 7a; R. 1283–1286, T.C. Op. 3–5.) On February 27, 1947, the corporation sold to Roosevelt College its beneficial interest in the portions of the Auditorium Hotel and Theatre, and the trustee conveyed the legal title to the college. The consideration consisted of checks in the total amount of $152,000 and a promissory note payable to bearer in the face amount of $250,000, which was valued at $200,000. (Pet. App. 7a; R. 1300–1301, T.C. Op. 14–15.) On May 1, 1947, the corporation assigned its interest under the trust, which purported to be the entire beneficial interest in the Fine Arts Building, as follows: an undivided one-half interest to Bessie L. Simon and an undivided one-half interest to the taxpayer and his wife (Pet. App. 7a; R. 1301, T.C. Op. 15).

During 1949, the taxpayer received three interest payments of $2,500 each on Roosevelt College's note. During that period he was negotiating with the college for the sale of the note, which was sold in that year, and for which taxpayer received an additional $190,000. He reported the selling price as $197,500 in his tax

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return for 1949 (Ex. 23) but reported no interest income for that year. He explained in the capital gains schedule that the three $2,500 payments, originally treated as interest, were, on closing the sale, to be treated as principal pursuant to an agreement between the seller and purchaser. Taxpayer promised to produce the alleged agreement or a copy of it but failed to do so at the trial. The Tax Court found that the note was sold for $190,000 and that the three $2,500 payments constituted interest payments. (Pet. App. 8a; R. 1318, 1346, T.C. Op. 27, 47.) The court of appeals held that these findings were not clearly erroneous (Pet. App. 8a).

5. In 1951, taxpayer acquired the stock of Metropolitan Radio Corporation of Chicago (which operated radio station WMOR) from various persons, including two officials of the Chicago Restaurant Association. On the joint 1951 income tax return filed by taxpayer and Mrs. Esther Melnick Teitelbaum, the following loss was claimed (Pet. App. 8a–9a):

> RADIO STATION W.M.O.R.:
> I advanced the sum of $71,213.18 to discharge the payroll debts, rent, taxes due to the government for Social Security and Withholding taxes of F. M. Radio Station, operated by myself. The corporate name was merely retained as a legal convenience and the station was never operated as a corporation. No income was received and funds were advanced by myself personally ---------- $71,213.18

Of this total claim, $22,269.88 represented items which did not constitute expenses of WMOR, and items total-

ing $20,901.94 had been deducted previously by taxpayer and his wife on their tax returns. At least $48,289.83 had been advanced by taxpayer to pay expenses of the Metropolitan Radio Corporation of Chicago. (Pet. App. 8a–9a; R. 1333–1335, T.C. Op. 38–39.)

In 1952, the Metropolitan Radio Corporation of Chicago was the subject of a petition in bankruptcy, and on April 18, 1952, the corporation was adjudicated bankrupt. The list of claims filed in the bankruptcy included the taxpayer's claim for loans in the amount of $71,213.18. Except for the fact of bankruptcy in 1952, no evidence of the uncollectibility of the advances made by the taxpayer was presented in the Tax Court. Accordingly, the Tax Court sustained the Commissioner's determination that the alleged loss of $71,213.18 did not occur in 1951. (Pet. App. 9a; R. 1334, 1351, T.C. Op. 39, 50.) The court of appeals affirmed (Pet. App. 9a).

6. During 1949–1951, taxpayer incurred expenses in traveling to Miami, Florida, where his then-to-be second wife lived and to Indio, California, where his first wife and family resided (R. 953–954). There is no evidence that taxpayer conducted any business in Florida (R. 892–893, 897–899, 954). The date farm in California was not operated as a business for profit (R. 1314–1315, 1344–1345, T.C. Op. 24–25, 46). There is no evidence that taxpayer made these trips for any purpose other than personal visits. The Tax Court found no deductible travel or hotel expenses beyond those already allowed by the Commissioner (R. 1323–1324, 1349–1350, T.C. Op. 31, 49–50), and the court of appeals affirmed (Pet. App. 9a–10a).

7. Substantial sums which had been distributed to taxpayer out of the operations of the Fine Arts Building and the Douglas Building[4] in Chicago were not reported as income. Taxpayer directed the real estate management agency in charge of the buildings to issue letters to him to evidence the amounts which had been paid to him, to his partner, and to the Tyted Company. At taxpayer's direction, these letters did not reflect amounts which had been disbursed out of the building agency accounts (on taxpayer's instructions), which were not normally part of the operating expenses of the buildings and which were reflected on the agency's statements as distributions of income to the owners of the buildings. Taxpayer sold his interest in the Douglas Building in 1951. In reporting net capital gain from the sale, taxpayer included an expense item of $200,000 as expenses not theretofore deducted. Many of the items included in that total had previously been deducted. The $200,000 item appeared on a page of the tax return prepared by the taxpayer personally and added to a schedule of cost data on a prior page of the return which had been prepared by taxpayer's attorney. (Pet. App. 10a–11a; R. 1288–1300, 1301–1309, 1324–1333, 1350, T.C. Op. 6–14, 15–21, 31–38, 50.) The Tax Court held that taxpayer had prepared the addition to the return

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[4] The Tyted Company acquired the Douglas Building on June 1, 1944. On December 27, 1944, Tyted conveyed title to the La Salle National Bank as trustee under a trust agreement that the beneficial interest in the property was in Tyted and that the power of direction was vested in taxpayer and his wife. (R. 1285, T.C. Op. 4.)

with knowledge of its falsity and with intent to evade tax (Pet. App. 11a; R. 1350, T.C. Op. 50).

8. In addition to the matters discussed above, the Tax Court sustained deficiencies in tax arising out of other transactions (R. 1351–1352, T.C. Op. 50–51), including the deduction in 1950 of a campaign contribution, allegedly paid for the Chicago Restaurant Association, which taxpayer failed to substantiate (R. 1318–1320, 1347–1348, T.C. Op. 27–28, 47–48), and the deduction in 1951 of a $49,800 catch-all expense item in connection with taxpayer's activity as labor counsel for the Association, which expense taxpayer did not substantiate as other than a duplication of specified deductions (R. 1320–1323, 1348–1349, T.C. Op. 28–31, 49).

The Tax Court found that the Commissioner had established a pattern of conduct amounting to fraud with intent to evade tax (R. 1343–1344, 1349, T.C. Op. 45, 49). The Tax Court based this finding on the entire record, including taxpayer's manipulation of the property management agent's reports with respect to the Tyted Company, taxpayer's failure to report income from the buildings, which was distributed to him, and his unwarranted claim for a catch-all professional expense deduction. The court of appeals affirmed the Tax Court's determinations of fraud with respect to 1946, 1947, and 1951 (Pet. App. 11a; R. 1343–1344, 1349, T.C. Op. 45, 49), as well as all the findings of deficiencies (Pet. App. 11a).

In previous proceedings, taxpayer had been convicted by a jury of attempting to defeat and evade the income taxes of the Tyted Company, himself, and

Esther Melnick Teitelbaum, for the years 1946 and 1947, in violation of Section 145(b) of the Internal Revenue Code of 1939 (R. 1312–1313, T. C. Op. 23; Ex. 1-A). He also had been indicted and charged with attempting to evade and defeat the joint income taxes owing by himself and his former wife for 1950 and 1951, and entered a plea of nolo contendere upon which he was found guilty on both counts (R. 1335, T. C. Op. 40; Ex. 2-B).[5] Both the Tax Court and the court of appeals stated that determinations of fraud in the present case are amply supported by the record without regard to the additional evidence of taxpayer's criminal fraud conviction (Pet. App. 11a; R. 1343–1344, T. C. Op. 45).

ARGUMENT

The questions presented to the courts below were essentially factual and turn upon the record facts. Their concurrent findings are final in the absence of a very exceptional showing of error. *Comstock* v. *Group of Investors*, 335 U.S. 211, 214. Taxpayer's

[5] On the conviction with respect to 1946 and 1947, the imposition of sentence was suspended and the taxpayer was placed on probation for twelve months (Ex. 1-A). On the judgment for 1950 and 1951, the taxpayer was sentenced to imprisonment for twelve months, but the sentence was suspended and the taxpayer placed on probation for that period (Ex. 2-B).

As a result of the conviction of income tax evasion for the years here in issue, the Supreme Court of Illinois suspended the taxpayer from the practice of law for three years. *In re Teitelbaum*, 13 Ill. 2d 586, 150 N.E. 2d 873, certiorari denied, 358 U.S. 881.

In *In the Matter of Abraham Teitelbaum*, 253 F. 2d 1 (C.A. 7th), the court of appeals dismissed the appeal from the denial of a petition for disbarment by the United States District Court on the ground that the United States Attorney had no standing to bring the appeal.

contention that Sections 58 and 294(d) of the Internal Revenue Code of 1939 (App., *infra*, pp. 21–28) are unconstitutional is plainly without merit. There is no conflict in decisions, nor any other ground shown for further review by this Court.

1. In essence, the taxpayer seeks review of findings of facts which in each instance are supported by substantial evidence.

(*a*) Contrary to taxpayer's assertion (Pet. 25), the determination that the Christmas bonus payments to Mr. Teitelbaum by his client, the Chicago Restaurant Association, were compensation (and therefore income) rather than gifts is supported by minutes of the Association and a letter from the Association to taxpayer; these documents state that the payments were designed to reimburse taxpayer for various expenses and contain no indication of any motivation of personal affection or spontaneous and disinterested generosity. See *Commissioner* v. *Duberstein*, 363 U.S. 278, 285.

(*b*) The finding that the cost of converting the electricity in the Fine Arts Building from direct current to alternating current was a capital expenditure, which must be amortized over its useful life, similarly is supported by the record (see the Statement, *supra*, pp. 4–5). Section 23(a) of the 1939 Code (App., *infra*, p. 20) permits the deduction of "ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business," but Section 24(a)(2) (App., *infra*, p. 21) states that no deduction shall be allowed for amounts paid out for "permanent improvements or betterments made to increase the value of any property." The Tax Court's finding is not, as taxpayer

suggests (Pet. 13–15), contrary to the stipulation that the conversion was done pursuant to an ordinance of the City of Chicago. Regardless of whether such involuntary modifications improve the appearance or efficiency of the property or prolong its life, the modifications do render the property more valuable for the owner's use by bringing it into compliance with the applicable regulation. See *Woolrich Woolen Mills* v. *United States*, 289 F. 2d 444 (C.A. 3d); *Parkersburg Iron & Steel Co.* v. *Burnet*, 48 F. 2d 163, 164–165 (C.A. 4th); *RKO Theatres, Inc.* v. *United States*, 163 F. Supp. 598, 602 (C.Cls.). In the present case, a purchaser properly would have been advised to pay less for a building in which the required conversion had not yet been made than for the building if the conversion already had been accomplished (see Pet. 4a; R. 851–856). As a practical matter, the expenditure in question increased the market value of the building.

(*c*) With respect to the date farm (Pet. App. 5a–6a), the taxpayer's knowledge of likely losses prior to his purchase, his use of the extensive residential facilities as a home for his family, the little time he devoted to the property and the manner of his operation of the property demonstrate that taxpayer did not operate the date farm as a business venture for profit (see the Statement, *supra*, pp. 5–6). Such losses are not deductible under either Section 23(a) of the 1939 Code or Section 23(e) (App., *infra*, p. 20), which permits the deduction of an individual's losses if "incurred in trade or business" or in a transaction "entered into for profit." See *Morton* v. *Commis-*

sioner, 174 F. 2d 302 (C.A. 2d); *Coffey* v. *Commissioner*, 141 F. 2d 204 (C.A. 5th); *White* v. *Commissioner*, 227 F. 2d 779 (C.A. 6th).

(*d*) The evidence presented in the Tax Court does not support taxpayer's contention that the three $2,500 interest payments, which he received in 1949 on Roosevelt College's mortgage note, were, by agreement at the time of sale, to be treated as payments of principal toward the purchase of the notes later during that year (see the Statement, *supra*, pp. 7–8). The document printed by taxpayer as Exhibit "A" (Pet. 24–25), which taxpayer claims is such an agreement, was not introduced in evidence in the Tax Court. Taxpayer asserts (Pet. 23) that he obtained this document on September 5, 1961, after the court of appeals had affirmed the decision of the Tax Court, and that he found the letter in the files of the Dean rather than in the office of the President of Roosevelt College. This document is not in evidence in this case, and even its authenticity has not been established. On the record in this case, taxpayer has failed to sustain his burden of proof that the payments represented something other than interest.

(*e*) Taxpayer's claims to deductions in 1951 for losses of amounts advanced to the Metropolitan Radio Corporation of Chicago were rejected below because taxpayer introduced no evidence of the uncollectibility of the advances in 1951 (see the Statement, *supra*, pp. 8–9). Taxpayer's present contentions (Pet. 18–21) point to no such evidence but reiterate that the corporation was adjudicated bankrupt in 1952—when taxpayer filed his claim for the advances.

(*f*) Taxpayer argues (Pet. 15–18) that he had business in both Chicago, Illinois, and Indio, California, and that, regardless of which of the two is considered his residence, he should be allowed a deduction for travel expenses to the other. During the period in issue, taxpayer's principal business was in Chicago, and he maintained his home there. (R. 1349–1350, T. C. Op. 49.) The date farm in California was not operated as a business, and, even if it had been a business, the expenses of taxpayer's trips to the farm would not be deductible since he introduced no evidence that he traveled to California for any purpose other than to visit his family. Taxpayer's contentions with respect to travel expenses beyond those allowed by the Commissioner are without support in the record. (R. 1350, T. C. Op. 49–50.)

(*g*) Finally, in his petition, taxpayer does not contest the findings of fraud for 1946, 1947 and 1951, which, in any event, are supported by substantial evidence, aside from the taxpayer's conviction of criminal fraud (Pet. App. 10a–11a; R. 1288–1309, 1320–1333, 1342–1344, 1348–1350, T. C. Op. 6–21, 28–38, 44–45, 49–50).

2. (a) The record contains no support for taxpayer's suggestion (Pet. 22) that Judge Russel E. Train, who presided over the present case in the Tax Court, had any "preconceived attitude" against the taxpayer, or any personal bias or prejudice. Taxpayer's argument (Pet. 21–22) that Judge Train was required to refuse to preside at the trial is wholly unwarranted.

Taxpayer had testified at the hearings of the House Subcommittee on Administration of the Internal

Revenue Laws (the so-called King Subcommittee). At that time, although Judge Train was an attorney on the staff of the Joint Committee on Internal Revenue Taxation, he was never a member of the staff of the King Subcommittee. Judge Train was a mere spectator to taxpayer's testimony as a witness before the King Subcommittee and took no position adverse to taxpayer at that time. (Pet. App. 3a; R. 1399.)

During the course of trial, Judge Train mentioned in passing that he had been present during the hearings of the King Subcommittee and had heard the taxpayer testify (R. 1399). Taxpayer made no objection to Judge Train's hearing the case at that time. In fact, taxpayer stated (Pet. App. 3a; R. 1398): "I am not attributing anything wrong. I am perfectly satisfied with your Honor. I certainly wouldn't have asked for a change of venue * * *." Only later, on his motion for reconsideration, did taxpayer make an objection to Judge Train's hearing of the case. The motion was denied by the Tax Court on July 5, 1960. (R. 1430–1438.)

(*b*) Taxpayer's additional argument (Pet. 7–8, 34) that the Commissioner failed to examine his books and records prior to the hearing before the Tax Court is contrary to the evidence, which discloses a thorough investigation of taxpayer's records (see *e.g.*, R. 1330–1331, 1334–1335, T.C Op. 36–37, 39). Moreover, since the findings below were supported by substantial evidence, there is no ground for taxpayer's claims (Pet. 7–8, 26–28, 34) that he has been prejudiced by the lack of adequate investigation by the Commis-

sioner or by the alleged disposition of a separate case involving his former partner.

3. For the first time in his petition here, taxpayer contends (Pet. 28–32) that Sections 58 and 294(d) of the 1939 Code (App., *infra*, pp. 21–28), which require the declaration of estimated tax by individuals and impose additions to tax for the failure to file a declaration or to pay installments of estimated tax or for the substantial underestimation of the estimated tax, are unconstitutional. This assertion plainly is without merit. See *Commissioner* v. *Acker*, 361 U.S. 87.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX

Internal Revenue Code of 1939 (26 U.S.C. 1952 ed.):

SEC. 22. GROSS INCOME.

(a) [as amended by Sec. 1, Public Salary Tax Act of 1939, c. 59, 53 Stat. 574] *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(3) [as amended by Sec. 111(a), Revenue Act of 1942, c. 619, 56 Stat. 798] *Gifts, bequests, devises, and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this

paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property * * *.

* * * * *

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Sec. 121(a), Revenue Act of 1942, *supra*] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. * * *

* * * * *

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) [as amended by Sec. 127(b), Revenue Act of 1942, *supra*] Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made * * *.

* * * * *

SEC. 58 [as amended by Section 13(a), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; Section 202(a), Revenue Act of 1948, c. 168, 62 Stat. 110; Section 208(d)(4), Social Security Act Amendments of 1950, c. 809, 64 Stat. 477; and Section 221(g), Revenue Act of 1950, c. 994, 64 Stat. 906] DECLARATION OF ESTIMATED TAX BY INDIVIDUALS.

(a) *Requirement of Declaration.*—Every individual (other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if—

(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of $4,500 plus $600 with respect to each exemption provided in section 25(b); or

(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed $100 for the taxable year and his gross income to be $600 or more.

(b) *Contents of Declaration.*—In the declaration required under subsection (a) the individual shall state—

(1) the amount which he estimates as the amount of tax under this chapter for the taxable year, without regard to any credits under sections 32 and 35 for taxes withheld at source and without regard to the tax imposed by subchapter E on self-employment income;

(2) the amount which he estimates as the credits for the taxable year under sections 32 and 35; and

(3) the excess of the amount estimated under paragraph (1) over the amount estimated under paragraph (2), which excess for the purposes of this chapter shall be considered the estimated tax for the taxable year.

The declaration shall also contain such other information for the purposes of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall contain or be verified by a written statement that it is made under the penalties of perjury.

(c) *Joint Declaration by Husband and Wife.*—In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with

respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or wife is a nonresident alien . If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(d) *Time and Place for Filing.*—

(1) *In General.*—The declaration required under subsection (a) shall be filed on or before March 15 of the taxable year, except that if the requirements of section 58(a) are first met

(A) after March 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(B) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(C) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) *Amendment of Declaration.*—An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioner with the approval of the Secretary. If so made, such amendments may be filed on or before the fifteenth day of the last month of any quarter of the taxable year subsequent to that in which the declaration was filed and in which no previous amendment has been filed, except that in the case of an amend-

ment filed after September 15 of the taxable year, it may be filed on or before January 15 of the succeeding taxable year. Declarations and amendments thereof shall be filed with the collector specified in section 53(b)(1).

(3) *Return as Declaration or Amendment.*—If on or before January 15 of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Commissioner with the approval of the Secretary—

(A) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this chapter, be considered as such declaration; and

(B) If the tax shown on the return (reduced by the credits under sections 32 and 35) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall, for the purposes of this chapter, be considered as the amendment of the declaration permitted by paragraph (2) to be filed on or before such January 15.

(e) *Extension of Time.*—The Commissioner may grant a reasonable extension of the time for filing declarations and paying the estimated tax, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(f) *Persons under Disability.*—If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(g) *Signature Presumed Correct.*—The fact that an individual's name is signed to a filed declaration shall be prima facie evidence for all purposes that the declaration was actually signed by him.

(h) *Publicity of Declaration.*—For the purposes of section 55 (relating to publicity of returns), a declaration of estimated tax shall be held and considered a return under this chapter.

SEC. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

* * * * *

(d) [as added by Section 118(a), Revenue Act of 1943, c. 63, 58 Stat. 21; and amended by Sections 6(b)(8) and 13(b), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231, and Section 2, Act of January 2, 1951, c. 1195, 64 Stat. 1136.] *Estimated Tax.*—

(1) *Failure to File Declaration or Pay Installment of Estimated Tax.*—

(A) *Failure to File Declaration.*—In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or frac-

tion thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

(B) *Failure to Pay Installments of Estimated Tax Declared.*—Where a declaration of estimated tax has been made and filed within the time prescribed, or where a declaration of estimated tax has been made and filed after the time prescribed and the Commissioner has found that failure to make and file such declaration within the time prescribed was due to reasonable cause and not to willful neglect, in the case of a failure to pay an installment of the estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of the unpaid amount of such installment, and in addition 1 per centum of such unpaid amount for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment.

(2) *Substantial Underestimate of Estimated Tax.*—If 80 per centum of the tax (determined without regard to the credits under sections 32 and 35), in the case of individuals other than farmers exercising an election under section 60(a), or 66⅔ per centum of such tax so determined in the case of such farmers, exceeds the estimated tax (increased by such credits), there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This paragraph shall not apply to the taxable year in which falls the death of the taxpayer, nor, under regulations prescribed by the Commissioner with the approval of the Secretary, shall it apply to the taxable year in which the taxpayer makes a timely payment of estimated tax within or before each quarter (excluding, in case the taxable year begins in 1943, any quarter beginning prior to July 1, 1943) of such year (or in the case of farmers exercising an election under section 60(a), within the last quarter) in an amount at least as great as though computed (under such regulations) on the basis of the taxpayer's status with respect to the personal exemption and credit for dependents on the date of the filing of the declaration for such taxable year (or in the case of any such farmer, or in case the fifteenth day of the third month of the taxable year occurs after July 1, on July 1 of the taxable year) but otherwise on the basis of the facts shown on his return for the preceding taxable year. In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to

meet the 80 per centum and 66⅔ per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950.

[R. 1280] T.C. Memo. 1960–11

Tax Court of the United States

ABRAHAM TEITELBAUM, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ABRAHAM TEITELBAUM AND ESTHER TEITELBAUM, PETITIONERS *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 40590, 71438. Filed January 29, 1960

Memorandum Findings of Fact and Opinion

TRAIN, *Judge:* Respondent determined deficiencies in petitioners' income taxes and additions to the taxes in the years and amounts as follows:

[R. 1281]

Docket	Year	Deficiency	Additions to tax		
			293(b)	294(d)(1)(A)	294(d)(2)
40590 (Abraham Teitelbaum)	1944	$2,355.93	$1,177.97		
	1945	17,835.72	8,947.86		
	1946	24,741.76	12,370.88		
	1947	45,063.24	22,531.62		
71483 (Abraham and Esther Teitelbaum)	1949	30,172.46			
	1950	60,318.66	30,159.33		$3,374.38
	1951	139,544.99	69,772.50	$12,559.04	8,372.70

The main issues are: (1) Whether petitioner's net income for the years 1944, 1945, 1946, and 1947 should include his distributive share of Christmas bonus payments made by the Chicago Restaurant Association to the Teitelbaum and Melnick partnership in those years;

(2) Whether the partnership of Teitelbaum and Melnick included in ordinary income capital gains of $5,500 in 1945 from the sale of real estate and $1,000 in 1947 from the sale of an interest in a syndicate;

(3) Whether petitioner Abraham Teitelbaum is liable for the additions to the tax provided by section 293(b) of the Internal Revenue Code of 1939 for the taxable years 1946 and 1947;

(4) Whether petitioners understated the distributive share of the ordinary net income of the Teitelbaum and Melnick partnership on the joint returns filed by themselves for the years 1949, 1950 and 1951;

(5) Whether petitioner Abraham Teitelbaum, in computing the gain upon the sale of the Douglas Building in 1951, [R. 1282] overstated the basis of the building by $200,000;

(6) Whether petitioners are entitled to any deduction on their joint income tax return for the year 1951 with respect to advances allegedly made to Radio Station WMOR, a corporation;

(7) Whether $7,500 received by petitioner from Roosevelt College was taxable interest or a return of principal;

(8) Whether the partnership of Teitelbaum and Melnick sustained a deductible farm loss for the years 1949, 1950 and 1951;

(9) Whether petitioners are liable for the additions to the tax provided by section 293(b) of the Internal Revenue Code of 1939 with respect to deficiencies in the joint income tax liabilities of Abraham Teitelbaum and Esther Melnick Teitelbaum for the years 1950 and 1951;

(10) Whether petitioners are liable for the additions to the tax provided by section 294(d)(1)(A) of the Internal Revenue Code of 1939 for failure to file a declaration of estimated tax for the year 1951; and

(11) Whether petitioners are liable for the addition to the tax provided by section 294(d)(2) for substantial underestimation of the estimated tax for the years 1950 and 1951.

Findings of Fact

Some of the facts have been stipulated and are hereby found as stipulated.

Petitioners, Abraham Teitelbaum, hereinafter referred to as Teitelbaum, and Esther Melnick Teitelbaum, hereinafter [R. 1283] referred to as Melnick, were husband and wife during the years 1944 to 1951, inclusive. Teitelbaum resided in Chicago, Illinois, throughout the entire period. Melnick resided in Chicago, Illinois, until approximately the latter part of 1947, when she moved to California, where she resided con-

tinuously thereafter. Teitelbaum filed individual income tax returns for the years 1944, 1945, 1946 and 1947 with the then collector of internal revenue for the first Illinois district at Chicago, Illinois. Teitelbaum and Melnick filed joint income tax returns for the years 1949 and 1950 with the then collector of internal revenue for the first Illinois district at Chicago, Illinois, and for the year 1951 with the director of internal revenue at Chicago, Illinois.

During the years 1944 to 1951, inclusive, Teitelbaum and Melnick were attorneys at law, licensed to practice in the State of Illinois, and they practiced as sole partners under the firm name of Teitelbaum and Melnick. Federal income tax returns were filed by the Teitelbaum and Melnick partnership for the years 1944 to 1947, inclusive, and for the years 1949 and 1950 with the then collector of internal revenue for the first Illinois district, Chicago, Illinois, and for the year 1951 with the director of internal revenue at Chicago, Illinois.

On May 31, 1944, the Tyted Co., hereinafter referred to as Tyted, was incorporated under the laws of the State of Illinois. Its original office was listed as Room 1313, 77 West Washington [R. 1284] Street, Chicago, Illinois. Teitelbaum was its initial registered agent. Corporation income tax returns for the years 1944 to 1947, inclusive, were filed by Tyted with the then collector of internal revenue for the first Illinois district, Chicago, Illinois. No Federal income tax returns were filed by Tyted for the years 1949, 1950 or 1951.

By the terms of its charter, the purposes for which the corporation was organized were: to own, manage, operate, buy, sell, mortgage and lease real estate and the improvements thereon, and to exercise all other powers incidental to the ownership, management and operation of real estate. The duration of the corporation was perpetual. Its total authorized stock consisted of 1,000 shares of single class stock, with a par value of $50 per share. There were no preferences, qualifications, limitations, restrictions or special or relative rights in respect of the shares of stock. Before Tyted could begin business, the total 1,000 shares were to be issued for a consideration of $50,000.

On June 2, 1944, Tyted issued 1,000 shares of its capital stock. Teitelbaum and Melnick received 999 shares as joint tenants and Josephine Melnick received the remaining share. Teitelbaum and Melnick paid no consideration to Tyted for the stock they received. The ownership of the Tyted capital stock remained unchanged through December 31, 1947.

[R. 1285] On June 1, 1944, Tyted acquired a property located at 20 East Jackson Boulevard, Chicago, Illinois, commonly known as the Douglas Building. The fee title to the building was acquired from John C. Slade for a consideration of $39,000, which was paid concurrently with the transfer of title. Tyted acquired the leasehold interest in the Douglas Building from the Missouri-Kansas Life Insurance Co. for a consideration of $5,000 paid at the time of purchase. Tyted, in connection with the purchase, paid a brokerage commission of $500.

At the time of acquisition of title to the Douglas Building by Tyted there were unpaid real estate taxes assessed for prior years with respect to the building which were satisfied by Tyted by an aggregate expenditure of $98,011.94, which included amounts paid in compromise of real estate taxes, foreclosure redemptions, 1944 real estate taxes, and all expenses in connection with such action. $25,000 of the expenditure was paid in December 1944, and Tyted claimed this amount as a deduction on line 22 of its 1944 corporation income tax return. $52,137.19 was paid during the year 1945 and claimed as a deduction on line 22 of Tyted's 1945 corporation income tax return. On December 27, 1944, Tyted conveyed title to the Douglas Building to the La Salle National Bank as trustee under Trust No. 10625. The trust agreement provided that the beneficial interest in the property was in Tyted, and the power of direction was vested in Teitelbaum and Melnick.

[R. 1286] On April 24, 1945, Tyted acquired title to certain property located at 408 to 426 South Michigan Avenue, Chicago, Illinois, which property included a building commonly known as the Fine Arts Building and a portion of buildings commonly known as the Auditorium Hotel and Auditorium Theatre, by special warranty deed from Northwestern Mutual Life Insurance Co. of Wisconsin. The purchase price of these

properties was $750,000 made up of $150,000 in cash and a promissory note of Tyted secured by a mortgage on the property sold in the principal amount of $600,000. The $150,000 in cash was comprised by a $10,000 check, a cashier's check of the La Salle National Bank in the amount of $116,500 and a check drawn by the seller payable to Willoughby and Company, hereinafter referred to as Willoughby, in the amount of $23,500, which represented Willoughby's brokerage commission on the sale, which check was endorsed by Willoughby. Although record title to the Fine Arts Building and Auditorium properties was in the name of Tyted, Tyted's actual interest was an undivided one-half interest and Tyted was entitled to one-half of the income from such properties. The other one-half interest was beneficially owned by either Paul R. Simon or Bessie L. Simon. On May 1, 1945, Tyted conveyed title to these properties to the La Salle National Bank as trustee under Trust No. 10693. The trust agreement provided that the beneficial interest in the properties was in Tyted, and the power of direction was vested in Teitelbaum and Melnick. [R. 1287] Both the Douglas Building and the Fine Arts Building were operated by Willoughby, a real estate management firm. Willoughby arranged rental leases with tenants, collected all rents and other building income, procured and paid for all ordinary maintenance services and supplies, and accounted to the building owners on a monthly basis. In connection with the building management, Willoughby rendered separate monthly statements meticulously detailed with respect to each building. Those statements itemized all income received and all disbursements made and contained summaries showing the total income, total operating expense and operating profit for the month.

Willoughby maintained separate bank accounts with respect to each building operated by it as agent. As to such accounts, only certain Willoughby personnel were authorized to sign checks. In connection with the Douglas Building, Willoughby maintained an account at the La Salle National Bank in the name of "The Tyted Co., Willoughby & Co., Agent", for the period July 6, 1944, to October 5, 1945, at which time the name of the account was changed to "The

Douglas Building, Willoughby & Company AGENT". This account is referred to hereafter as the Douglas Building Agency account. In connection with the Fine Arts Building, Willoughby maintained an account at the La Salle National Bank in the name of "The Fine Arts Building, Willoughby & Co., Inc., Agent". Such account is hereafter referred to as the Fine Arts Building Agency account.

[R. 1288] Except when authorized or directed by building owners, Willoughby did not make disbursements for such items as major repairs or improvements, real estate taxes, or mortgage payments. Also, Willoughby would disburse funds to the owner of the building or any other person to whom the owner directed a payment to be made. Normally such payments would be reflected on the monthly statements as a charge to the ownership account unless the owner directed the payment to be charged in some other way. Willoughby did not maintain records for the purpose of computing profit and loss or income tax liability but merely to show cash receipts and disbursements.

According to the books and records of Willoughby, the gross receipts and operating expenditures with respect to the Douglas Building for the year 1944 were as follows:

Gross receipts	$30,505.93
Operating expenditures	19,736.79

The amount of $10,769.14 was reported by Tyted on its 1944 income tax return as its operating profit with respect to the Douglas Building. Included in the $19,736.79 operating expenditures were $487.06 nondeductible expenses. The records of Willoughby did not reflect $3,892.95 additional expenses, nor $25,000 delinquent real estate taxes, due at the time the Douglas Building was acquired by Tyted, which was paid in December 1944 and entered as a deduction on Tyted's 1944 corporate income tax return.

[R. 1289] In connection with the acquisition of the Fine Arts Building by Tyted, an agreement was negotiated between Teitelbaum and the World Amusement Corporation, one of the building tenants, whereby the latter deposited $25,000 and received an extension of its lease for a ten-year period. The agreement provided that the tenant would renovate and

decorate the premises and install new seats (the leased premises consisted of a theatre) and that Tyted would refund out of the $25,000 deposit the tenant's outlays and expenditures but not to exceed $10,000. It was provided that such refunds by Tyted would reduce the amount of the tenant's deposit *pro tanto*.

Subsequent to the acquisition of the Fine Arts Building by Tyted, the premises leased by the World Amusement Corporation were renovated and decorated and new seats were installed by the tenant. Shortly after the tenant completed renovating and decorating the premises, it received a refund of $1,920. This refund was made by check dated October 3, 1945, drawn by Willoughby, at Teitelbaum's direction, on the Fine Arts Building Agency account and charged to "decorating" expense. Shortly after the tenant installed new seats in the premises, it received a refund of $8,080, by check dated May 15, 1946, drawn by Willoughby at Teitelbaum's direction and charged to "alterations".

[R. 1290] According to the books and records of Willoughby, the gross receipts and operating expenditures with respect to the Douglas Building and the Fine Arts Building for 1945 were as follows:

	Douglas Bldg.	*Fine Arts Bldg.*
Gross receipts	$79,304.86	$167,088.61
Operating expenditures	47,629.45	88,838.21

Included in the operating expenses were nondeductible expenses of $333.05 with respect to the Douglas Building and $3,445.37 with respect to the Fine Arts Building. Willoughby's records did not reflect expenses totaling $6,625.66 with respect to the Douglas Building and $22,072.14 with respect to the Fine Arts Building, nor the $52,137.19 delinquent real estate taxes due at the time Tyted acquired the Douglas Building, paid during the year 1945 and entered as a deduction on Tyted's 1945 corporate income tax return. Tyted reported $72,131.40 income representing the operating profits of the Douglas Building and its one-half share of the operating profits of the Fine Arts Building. Depreciation claimed by Tyted on its 1945 corporate income tax return with respect to the Douglas Building and the Fine Arts Building totaled $30,000, computed as follows:

[R. 1291]

Property	Acquired	Cost or other basis	Remaining basis to be recovered	Estimated life	Depreciation
Douglas Bldg	1944	$100,000	$95,000	20 yr	$5,000
Fine Arts Bldg	1945	500,000	475,000	20 yr	25,000

Tyted claimed an additional $20,687.94 expenses from the operation of the company for trustees' fees, attorney's fees, interest, title charges, tax foreclosure, insurance, and Christmas gifts. An additional $3,000 deduction was claimed on line 21 of its 1945 corporate income tax return as interest on a bank loan. Tyted reported no net taxable income for either 1944 or 1945, but claimed a net operating loss for the year 1945 in the amount of $33,743.73.

Teitelbaum received distributions from Tyted in the net amount of $4,512.94 during the year 1944 and in the amount of $6,062.57 during the year 1945. These distributions were not reported as income of either the Teitelbaum and Melnick partnership or of petitioner individually.

The income and expenses with respect to the operation of the Douglas Building and the Fine Arts Building, respectively, during 1946 were as follows:

[R. 1292] *Douglas Building*

Income and operating expenses per Willoughby's records:

Month	Gross receipts	Operating expenses	Operating profit
January	$7,316.46	$4,372.66	$2,943.80
February	8,643.02	4,398.02	4,245.00
March	7,702.51	5,959.59	1,742.92
April	7,642.20	3,676.72	3,965.48
May	9,294.93	3,891.35	5,403.58
June	7,980.81	3,945.66	4,035.15
July	8,374.69	4,863.21	3,511.48
August	8,546.16	5,778.74	2,767.42
September	8,504.46	3,698.08	4,806.38
October	8,937.78	6,744.77	2,193.01
November	8,735.92	4,294.46	4,441.46
December	9,105.71	4,782.35	4,323.36
Annual total	100,754.65	56,405.61	44,349.04

Operating profit from Douglas Bldg. per Willoughby's records		$44,349.04
Less deductible items not reflected as operating expenses per Willoughby's records:		
Real estate taxes	$12,060.56	
Depreciation	2,736.23	
Other	1,685.68	
		16,482.47

[R. 1293] *Fine Arts Building*

Income and operating expenses per Willoughby's records:

Month	Gross receipts	Operating expenses	Operating profit
January	$23,112.58	$13,136.03	$9,976.55
February	22,345.03	12,426.34	9,918.69
March	23,094.18	14,410.44	8,683.74
April	30,972.16	12,096.97	18,875.19
May	21,088.34	22,395.80	(1,307.46)
June	23,337.85	12,805.18	10,532.67
July	28,842.22	11,817.45	17,024.77
August	22,297.80	11,456.65	10,841.15
September	25,773.87	13,487.95	12,285.92
October	33,454.29	21,839.37	11,614.92
November	28,554.68	17,938.43	10,616.25
December	25,711.54	13,879.24	11,832.30
Annual total	308,585.04	177,679.85	130,905.19

Operating profit from Fine Arts Bldg. per Willoughby's records		$130,905.19
Add: Refund of deposit World Playhouse Corp. erroneously included in operating expenses as "alterations"		8,080.00
Less deductible expenses not reflected in operating expenses per Willoughby's records:		138,985.19
Mortgage interest	$23,299.67	
Depreciation—Building	11,187.45	
Depreciation—Furniture & Fixtures	245.94	
Legal Fees	522.60	
Insurance—Amortizable portion	2,887.85	
Insurance—Premiums paid and charged to operating expenses	(4,554.90)	
Other	349.45	33,933.06

[R. 1294] During the year 1946 amounts were withdrawn by check from the accounts of the Douglas Building, the Fine Arts Building, and the Tyted Co. for the benefit of Bessie Simon, Teitelbaum and Melnick, and Teitelbaum individually, as follows:

Douglas Building

Date	*Check No.*	*Payee*	*Amount*
1-6-46	457	Willoughby & Co. (re Dr. Sachs Lab.)	$2,500 00
8-5-46	621	Teitelbaum & Melnick	1,000 00
12-4-46	731	Carlson Sheet Metal (Hawthorne House)	900 00
12-16-46	753	Elwood Plumbing Co. (Hawthorne House)	800 00
12-16-46	754	Richard H. Frank (Hawthorne House)	525 75
3-1-46	483	Tyted Co., A.T. Special Acct	4,202 74
11-[illegible]-46	721	Tyted Co., A.T. Special Acct	4,000 00

Fine Arts Building

3-1-46	409	Tyted Co., A.T. Special Acct	6,732 41
5-1-46	505	Teitelbaum & Melnick	1,443 79
11-19-46	788	Tyted Co., A.T. Special Acct	5,000 00

The Lyted Co.

3-29-46	Plain Check	A. Teitelbaum	500 00
3-30-46	Plain Check	A. Teitelbaum	400 00
1-31-46	41	Fine Arts Bldg.	2,000 00
1-16-46	42	A. Teitelbaum	150 00
4-2-46	43	Bessie L. Simon	1,500 00
4-10-46	44	Mary Jacobs	2,905 00
4-10-46	45	Sarah Simmenberg	2,905 00
4-10-46	46	Stella Austin	680 00
4-10-46	47	Bessie Shapiro	825 00
4-12-46	48	A. Teitelbaum	200 00
4-30-46	49	Victor L. Schlaeger	6,030 20
4-30-46	50	Bessie L. Simon	2,377 18
5-8-46	51	Bessie L. Simon	4,050 05
5-22-46	52	Ed. J. Barrett, Sec. of State	25 00
5-29-46	54	A. Teitelbaum	800 00
5-29-46	55	Mort Levin	100 00
5-29-46	56	A. Teitelbaum	300 00

[R. 1295]

5-31-46	57	Cash	500 00
6-4-46	Plain Check	Cash	400 00
6-10-46	58	Teitelbaum & Melnick	500 00
7-11-46	59	Bessie L. Simon	840 00
7-11-46	60	Bessie L. Simon	1,895 00
7-11-46	61	Chicago Convention Bureau	100 00
8-1-46	62	Teitelbaum & Melnick	400 00
8-2-46	63	A. Teitelbaum	300 00
8-12-46	64	Bessie L. Simon	3,000 00
8-26-46	65	Victor L. Schlaeger	533 58
8-26-46	66	Victor L. Schlaeger	6,030 28
8-30-46	67	Elmer E. Stults, Inc	2,300 00
8-30-46	68	A. Teitelbaum	100 00
9-5-46	69	Bessie L. Simon	1,500 00
9-16-46	70	Joseph Salerno	2,000 00
9-17-46	71	A. Teitelbaum	650 00
9-23-46	72	La Salle Nat'l Bank	2,001 27
9-30-46	73	Bessie L. Simon	2,714 09
10-9-46	74	American Drug Industries	2,500 00
10-12-46	75	A. Teitelbaum	500 00
10-4-46	Plain Check	Pauline DeMartini	3,000 00
10-21-46	76	Bessie L. Simon	1,505 55
10-24-46	77	Bessie L. Simon	500 00
10-30-46	78	A. Teitelbaum	700 00
11-12-46	79	Bessie L. Simon	2,500 00
11-12-46	80	Bessie L. Simon	2,565 30
11-20-46	81	Bessie L. Simon	2,000 00
12-20-46	82	T W A	119 55
11-21-46	Plain Check	A. Teitelbaum, Special	5,000 00

No part of the amounts represented by the above checks were reported as income of either the Teitelbaum and Melnick partnership or Teitelbaum, individually.

Willoughby disbursed checks drawn on the Fine Arts Building Agency account and payable to the Northwestern Mutual Life Insurance Company pursuant to instructions given by Teitelbaum to Rachel Haynie, which checks represented payments of principal and interest to the mortgagee of the Fine Arts property during the years 1946 and 1947, as follows:

[R. 1296]

Date	Ck. No.	Allocation per Willoughby & Co. records and monthly statements		
		Amount	Principal	Interest
1-31-46	365	$10,931.40	$5,030.52	$5,900.88
4-25-46	494	10,931.40	5,080.83	5,850.57
7-25-46	625	10,931.40	5,131.63	5,799.77
10-28-46	748	10,931.40	5,182.95	5,748.45
Total (1946)			20,425.93	23,299.67
1-30-47	887	10,931.40	5,234.78	5,696.62
4-29-47	1031	10,931.40	5,698.24	5,233.16
8-1-47	1174	10,921.40	6,344.11	4,587.29
10-28-47	1305	10,931.40	6,407.55	4,523.85
Total (1947)			23,684.68	20,040.92

Tyted reported $61,446.92 as its income from the operation of the Douglas Building and the Fine Arts Building for the year 1946. It claimed deductions of $30,000 for depreciation, $12,110.56 for taxes, and $1,250 for other items, including donations. Tyted reported net income of $18,086.36 and computed its tax as $4,059.86. It did not claim any loss carry-over from the operations of 1944 or 1945.

Distributions totaling $56,255.27 were made by Tyted to Teitelbaum and Melnick during the year 1946. No part of this amount was reported as income by either the Teitelbaum and Melnick partnership or Teitelbaum individually for the year 1946.

Income and expenses with respect to the operation of the Douglas Building and the Fine Arts Building for the taxable year 1947 were as follows:

[R. 1297] *Douglas Building*

Income and operating expenses per Willoughby's records:

Month	Gross receipts	Operating expenses	Operating profit
January	$8,700.92	$5,897.29	$2,893.63
February	11,099.01	4,873.63	6,825.38
March	10,990.32	4,790.83	6,169.49
April	12,462.21	4,900.23	7,561.98
May	11,158.24	4,771.94	6,386.30
June	11,439.82	4,343.15	7,096.67
July	11,987.85	5,386.10	6,601.75
August	11,536.90	5,889.44	5,647.46
September	11,880.96	4,008.19	7,872.77
October	11,869.38	4,364.91	7,504.47
November	11,783.77	4,323.89	7,459.88
December	13,164.69	5,301.81	7,862.88
Annual total	138,734.07	58,851.41	79,882.66

Gross income from Douglas Bldg. per Willoughby's records		$79,882.66
Less deductible items not reflected as operating expenses per Willoughby's records:		
Real estate taxes	$12,437.48	
Depreciation	2,736.23	
Other	2,753.39	
		17,927.10

[R. 1298] *Fine Arts Building*

Income and operating expenses per Willoughby's records:

Month	Gross receipts	Operating expenses	Operating profit
January	$37,330.93	$14,305.69	$23,025.44
February	28,851.03	15,093.55	13,757.48
March	32,210.92	14,790.17	17,420.75
April	39,032.36	19,946.80	19,085.56
May	30,843.28	14,202.24	16,641.04
June	31,203.45	13,757.42	17,446.03
July	34,528.50	12,856.58	21,671.92
August	27,680.41	18,530.33	9,150.08
September	30,915.42	18,050.25	12,865.17
October	39,754.10	28,539.96	11,214.14
November	33,687.46	29,996.26	3,691.20
December	33,524.51	20,752.43	12,772.08
Annual total	399,562.37	220,821.48	178,740.89

Operating profit from Fine Arts Bldg. per Willoughby's records		$178,740.89
Less: Lease deposit included in gross receipts		1,000.00
		177,740.89
Add: Nondeductible disbursements erroneously charged to operating expenses per Willoughby's records:		
Paid to Tyted and charged to travel expense	$10,000.00	
Paid to Paul R. Simon and charged to travel expense	10,000.00	
Repayments on Willoughby loan charged to commission expense	20,000.00	40,000.00
		217,740.89
Less: Deductible items not reflected as operating expenses per Willoughby's records		
Mortgage interest	$20,506.00	
Depreciation—Building	7,848.25	
Depreciation—Furniture & Fixtures	245.94	
Real estate taxes	35,928.60	
Other	4,777.80	69,306.59

Willoughby disbursed checks during 1947 which were drawn on the Douglas Building Agency Account and payable to Tyted or to the Teitelbaum and Melnick partnership and reflected on Willoughby's records and monthly statements as charges to the ownership account (Tyted), as follows:

Payable to the Tyted Company			Payable to Teitelbaum & Melnick		
Date	Ck. No.	Amount	Date	Ck. No.	Amount
1-1-47	784	$357 08	6-12-47	920	$5,000 00
1-16-47	784	3,000 00	6-27-47	934	1,000 00
1-30-47	794	1,500 00	7-1-47	940	416 95
2-13-47	805	2,000 00	7-8-47	942	2,500 00
2-28-47	816	2,000 00	7-14-47	948	3,000 00
2-26-47	819	1,500 00	7-29-47	966	1,500 00
3-13-47	830	4,000 00	8-4-47	972	1,000 00
4-1-47	851	1,264 84	8-13-47	979	3,000 00
5-1-47	881	1,413 24	8-21-47	993	1,000 00
5-8-47	892	4,000 00	10-1-48	1025	145 96
5-19-47	906	1,500 00	11-1-47	1057	350 14
6-1-47	912	742 59	11-14-47	1086	*100 00
6-23-47	930	*500 00	11-24-47	1082	1,500 00
9-29-47	1019	1,000 00	12-1-47	1090	580 75
10-27-47	1049	1,000 00			
12-11-47	1100	3,000 00			$21,258 79
		29,077 45			

*The checks drawn on 6-23-47 and 11-14-47 were drawn payable to currency and cashed by Willoughby in repayment of prior advances to Teitelbaum.

[R. 1300] During 1947 Willoughby disbursed checks which were drawn on the Fine Arts Building Agency account and payable to Tyted or to the Teitelbaum and Melnick partnership and reflected on Willoughby's records and monthly statements as charges to the ownership account (Tyted), as follows:

Payable to the Tyted Company			Payable to Teitelbaum & Melnick		
Date	Ck. No	Amount	Date	Ck. No	Amount
1-16-47	881	$5,000 00	6-1-47	1092	$2,635 78
1-28-47	884	3,000 00	6-20-47	1118	1,000 00
1-30-47	888	2,000 00	6-23-47	1121	2,000 00
2-11-47	902	*3,500 00	7-1-47	1133	703 56
3-13-47	904	5,000 00	8-12-47	1190	*450 99
3-13-47	952	4,000 00	8-25-47	1216	256 00
5-1-47	1026	4,442 62	8-25-47	1217	1,742 00
5-8-47	1039	8,000 00	9-12-47	1231	2,000 00
5-19-47	1070	2,000 00			
9-29-47	1264	1,500 00			10,789 34
		41,442 62			

*Check drawn on 2-11-47 was made payable to Willoughby and the proceeds thereof received by Willoughby pursuant to the direction of Teitelbaum. The check drawn on 8-12-47 was made payable to currency and cashed by Willoughby in repayment of prior advances to Teitelbaum.

On February 27, 1947, Tyted sold to Roosevelt College its beneficial interest in the south fifty-two feet of the Fine Arts

Building, which was the Auditorium Hotel and Auditorium Theatre portions, and legal title was conveyed to Roosevelt College by the La Salle National Bank. The consideration received by Tyted from Roosevelt College was as follows: checks dated February 6, 1947, and February 27, 1947, in the amounts of $10,000 and $142,000, respectively, and a promissory note payable to bearer in the face amount of $250,000. The value of the [R. 1301] note was $200,000. The cost basis properly allocable to the property sold to the Roosevelt College, adjusted for allowable depreciation, was $293,673.72 and the expenses of the sale were $842.20.

On May 1, 1947, pursuant to corporate resolution, Tyted assigned its interest under Trust No. 10693, which purported to be the entire beneficial interest in the Fine Arts Building, as follows: an undivided one-half interest to Bessie L. Simon and an undivided one-half interest to Teitelbaum and Melnick.

The income and expenses with respect to the operation of the Fine Arts Building for the period January 1, 1947, to April 30, 1947, were as follows:

Fine Arts Building

(Period 1-1-47 to 4-30-47)

Income and operating expenses per Willoughby's records:

Month	Gross receipts	Operating expenses	Operating profit
January	$37,330 93	$14,305 49	$23,025 44
February	28,851 03	15,093 55	13,757 48
March	32,210 92	14,790 17	17,420 75
April	39,032 36	19,946 80	19,085 56
Four month total	137,425 24	64,136 01	73,289 23

Gross income from Fine Arts Bldg. per Willoughby's records	$73,289 23
Less: Lease deposit included in gross receipts	1,100 00
	72,289 23

[R. 1302]

Less deductible items not reflected as operating expenses per Willoughby's records:		
1946 real estate taxes paid April 1947	$35, 928. 60	
Trustee's fee—La Salle National Bank	2, 105. 00	
Interest on mortgage	5, 696. 62	
Depreciation (4 months)	2, 698. 06	
Other	1, 309. 94	
		$47, 738. 32

On or about November 7, 1947, Teitelbaum telephoned Rachel Haynie, the person in charge of the Douglas Building and Fine Arts Building accounts at Willoughby, from California and requested that Willoughby furnish him a letter showing payments during 1947 which were made directly to Tyted and to Teitelbaum and Melnick from the operation of the Douglas Building and Fine Arts Building. In response thereto, Haynie prepared separate letters dated November 7, 1947, with respect to the Douglas Building and the Fine Arts Building showing distributions of net cash receipts of each building for the ten-month period ended October 31, 1947, as follows:

Paid to	Douglas Building	Fine Arts Building
Tyted Company	$28, 077. 45	$36, 442. 62
Teitelbaum & Melnick	15, 952. 09	10, 789. 34

Subsequent to receiving the above letters, Teitelbaum telephoned Haynie and stated that the figures in the November 7, 1947, letters were not the figures he wanted. In meetings with [R. 1303] Haynie and her assistant, Teitelbaum reviewed the work papers prepared by Haynie with regard to the distributions and pointed out which payments he wished reflected in the letters and which he wished omitted therefrom. Thereafter, Haynie, on behalf of Willoughby prepared letters dated December 4, 1947, with respect to each building showing the total of certain distributions as requested by Teitelbaum, viz.:

Paid to	Douglas Building	Fine Arts Building
Tyted Company	$23, 420. 37	$8, 000. 00
Teitelbaum & Melnick	9, 012. 84	5, 703. 56

On or about December 17, 1947, Teitelbaum advised Haynie that he had not received the letters dated December 4, 1947, from Willoughby and requested that new letters be sent to him. In accordance with his request Haynie, on behalf of Willoughby, prepared letters dated December 17, 1947, with respect to each building showing the total of certain distributions as requested by Teitelbaum. In substance, such letters differed from the letters of December 4, 1947, only in that the total of the indicated distributions from the Douglas Building to Tyted was increased by $3,000. This increase resulted from a distribution in that amount during the intervening period, i.e., December 10, 1947. The letters of December 17, 1947, indicated the following:

Paid to—	Douglas Building	Fine Arts Building
Tyted Company	$26,420.37	$5,000.00
Teitelbaum & Meinick	9,012.84	5,703.56

[R. 1304] During 1947 Teitelbaum authorized Willoughby to withdraw $5,000 per month from the Fine Arts Building Agency account, as operating profits permitted, as repayment of the balance of a loan made by Willoughby for the acquisition of the Fine Arts Building. Thereafter, Willoughby drew four checks dated August 25, 1947, September 24, 1947, November 20, 1947, and December 8, 1947, respectively, each in the amount of $5,000 on the Fine Arts Building Agency account payable to itself in repayment of the balance of the loan. At the direction of Teitelbaum, these amounts were recorded as commission expenses on the records maintained with respect to the Fine Arts Building by Willoughby.

Pursuant to directions from Teitelbaum, Willoughby disbursed checks on June 20, 1947, in the amount of $10,000, and August 4, 1947, in the amount of $5,000, drawn on the Fine Arts Building Agency account and payable to the La Salle National Bank to be applied to the liability of Tyted for outstanding loans. These checks were reflected on Willoughby's records and monthly statements as charges to the ownership account.

On or about October 15, 1947, Teitelbaum directed Haynie, Willoughby's bookkeeper, to draw a check on the Fine Arts Building Agency account in the amount of $10,000, payable to Tyted, and charge it to "administrative expense." The check was drawn and charged as directed by Teitelbaum.

The following schedules set forth in composite form the distributions made by Willoughby during 1947 out of the Douglas [R. 1305] Building Agency account and the Fine Arts Building Agency account, respectively, by checks payable directly to either Tyted or Teitelbaum and Melnick; the individual checks selected by Teitelbaum to be reflected on letters addressed to him by Willoughby; and the distributions omitted from such letters at Teitelbaum's direction, and, consequently, not reported on any income tax return. The schedules also include four checks payable to currency or Willoughby which represented repayments of prior advances by Willoughby but do not include checks payable to any other payees and do not include the check payable to Tyted in the amount of $10,000 dated October 15, 1947, purporting to represent travel expenses. With minor exceptions, all of the checks set forth in the schedules appear on the work sheets prepared by Haynie and submitted to Teitelbaum. Such work sheets also indicate the checks which were disregarded at Teitelbaum's direction in computing the distributions to be reflected in letters from Willoughby. All of the checks listed on the following schedules appear on the monthly statements rendered by Willoughby as distributions to the building owners.

[R. 1306]

Douglas Building

Date	Ck. No.	Distribution from Douglas Bldg. agency account		Amounts reflected in letter dated 12-17-47 and returns filed		Amount not reported on any return
		To Tyted Co.	To Teitelbaum & Melnick	Tyted Co.	Teitelbaum & Melnick	
1-1-47	784	$657.08				$657.08
1-16-47	794	3,000.00				3,000.00
1-30-47	794	1,500.00				1,500.00
2-13-47	805	2,000.00		$2,000.00		--
2-25-47	816	2,000.00		2,000.00		
2-26-47	819	1,500.00		1,500.00		
3-13-47	830	4,000.00		4,000.00		
4-1-47	851	1,264.54		1,264.54		
5-1-47	881	1,413.24		1,413.24		
5-8-47	892	4,000.00		4,000.00		
5-19-47	906	1,500.00		1,500.00		
6-1-47	912	742.59		742.59		
6-23-47	930	500.00				500.00
9-29-47	1019	1,000.00		1,000.00		
10-27-47	1049	1,000.00		1,000.00		
12-11-47	1100	3,000.00		[1] 3,000.00		
6-12-47	920		$5,000.00		$5,000.00	
6-27-47	934		1,000.00		1,000.00	
7-1-47	940		416.95		[2] 416.95	
7-8-47	942		2,500.00			2,500.00
7-14-47	948		3,000.00	3,000.00		
7-29-47	966		1,500.00		[2] 1,500.00	
8-4-47	972		1,000.00			1,000.00
8-13-47	979		3,000.00			3,000.00
8-21-47	993		1,000.00			1,000.00
10-1-47	1025		145.95			145.95
11-1-47	1057		535.14		535.14	
11-14-47	1066		100.00			100.00
11-24-47	1082		1,500.00			1,500.00
12-1-47	1090		590.75		590.75	
		29,077.45	21,258.79	[1] 26,420.37	9,012.84	14,903.03

[R. 1307]

[1] Check No. 1100 in the amount of $3,000 was issued after the preparation of the worksheet and the letter dated 12-4-47. Hence, the totals on those documents regarding distributions to the Tyted Company are $23,420.37 rather than $26,420.37 as above.

[2] These figures are components of the figure $4,416.95 appearing on the worksheet, which figure also included Check No. 942 in the amount of $2,500. The latter figure had been eliminated before preparation of letters dated 12-4-47 and 12-17-47.

[R. 1308] *Fine Arts Building*

Date	Ck. No.	Distribution from Fine Arts Bldg. agency account		Amounts reflected in letter dated 12-17-47 and returns filed		Amount not reported on any return
		To Tyted Co.	To Teitelbaum & Melnick	Tyted Co.	Teitelbaum & Melnick	
1-16-47	861	$5,000.00				$5,000.00
1-28-47	884	3,000.00		$3,000.00		
1-30-47	888	2,000.00		2,000.00		
2-11-47	902	3,500.00				3,500.00
2-18-47	904	8,000.00				8,000.00
3-13-47	952	4,000.00				4,000.00
5-1-47	1038	4,442.62				4,442.62
5-6-47	1039	8,000.00				8,000.00
5-19-47	1070	2,000.00				2,000.00
5-20-47	1264	1,500.00				1,500.00
6-1-47	1082		$2,635.78			2,635.78
6-20-47	1118		1,000.00		$1,000.00	
6-23-47	1121		2,000.00			2,000.00
7-1-47	1133		703.56		703.56	
8-12-47	1190		450.00			450.00
8-26-47	1216		258.00		258.00	
8-25-47	1217		1,742.00		1,742.00	
9-12-47	1231		2,000.00		2,000.00	
		41,442.62	10,789.34	5,000.00	5,703.56	41,528.40

[R. 1309] Teitelbaum prepared the 1947 corporate income tax return of Tyted and the partnership information return of the Teitelbaum and Melnick partnership and reported as gross income from the operation of the Douglas Building and the Fine Arts Building the partial distributions from Willoughby as reflected in their letters dated December 17, 1947, as follows:

Rental income per Tyted Co. return	$31,420.37
Distributions to The Tyted Co. indicated per Willoughby letter dated December 17, 1947:	
Douglas Building	26,420.37
Fine Arts Building	5,000.00
	$31,420.37
Rental income per Teitelbaum and Melnick return	14,716.40
Distributions to Teitelbaum and Melnick indicated per Willoughby letter dated December 17, 1947:	
Douglas Building	9,012.84
Fine Arts Building	5,703.56
	$14,716.40

Tyted claimed deductions of $30,000 for depreciation, $3,000 for interest, and $25 for taxes on its 1947 corporate income tax return. Tyted paid income taxes of $1,028.03 for the year

1947. Teitelbaum claimed no depreciation on the partnership return of 1947 for the period it held the beneficial interest in the Fine Arts Building.

Petitioner had been hired as labor counsel for the Chicago Restaurant Association in 1939 at a fee of $15,000 plus $5,000 for expenses. This was subsequently raised to $20,000 plus [R. 1310] $4,000 for expenses, and later the fee became a straight retainer out of which petitioner was to meet expenses. The gross receipts from professional activity of the Teitelbaum and Melnick partnership, income from other sources, and deductions for the years 1944 to 1947, inclusive, as reported on the returns of partnership income, were as follows:

	1944	1945	1946	1947
Professional Receipts	$43,957.92	$53,507.25	$52,403.05	$37,759.00
Other Income				14,716.40 (Fine Arts)
Deductions:				
Wages & Salaries	1,777.50	2,943.50	2,015.00	990.00
Rent	2,074.68	2,096.38	2,453.67	3,220.00
Repairs	37.68	19.53		
Taxes	17.77	29.43	20.15	9.90
Depreciation	424.98	424.98	424.98	
Other	18,823.91	23,421.62	24,981.88	32,756.75
Net Income	20,801.10	24,571.81	22,607.37	15,487.88

The item listed as "other deductions" on the tax returns included the following:

	1944	1945	1946	1947
Telephone	$760.46	$731.57		
Water	81.51	76.83		
Bar Association	55.00	83.12		
Towels	19.80	19.80		
Court Costs & Reporter	322.38	267.05	[1] $18,308.61	[1] $32,756.75
Supplies & Stamps	762.54	446.94		
Expenses incidental to business	2,041.71	1,806.90		
Business trips	3,715.96	4,096.99		
Contributions		1,114.61		
Lawyers	250.00	750.00		

[1] The $18,308.61 listed for the year 1946, and the $32,756.75 for the year 1947 were not itemized further than a statement that mentioned the categories which made up the total amount.

[R. 1311]

	1944	1945	1946	1947
Louis Romano	$5,000.00	$5,000.00	$5,000.00	
Morris Teitelbaum	4,000.00	4,000.00	4,000.00	
Taxicab fares	400.00	400.00	400.00	
Entertainment—3% of income	1,318.73	1,605.22	1,572.09	
Taxes		956.57		
Interest		2,075.98		
Currency Exchange	95.82			

In addition to the fee received from the Chicago Restaurant Association, Teitelbaum received Christmas gifts to cover additional expenses which the association considered that he incurred in his capacity as labor lawyer for the association, in the years 1944 to 1947, inclusive, as follows:

1944	$2,000
1945	2,000
1946	2,000
1947	4,000

These amounts were not reported as income on the partnership returns or individual returns filed for those years by Teitelbaum.

On his individual income tax returns filed for the years 1944 through 1947, inclusive, Teitelbaum reported gross income, deductions, and net taxable income as follows:

Year	Gross income	Deductions				Net taxable income
		Contributions	Taxes	Medical	Exemptions	
1944	$10,400.00	$893.30	$969.94		$2,000	$6,537.34
1945	12,285.91	1,500.00			2,500	8,285.91
1946	11,303.68	500.00	1,000.00		2,500	7,303.68
1947	7,743.93	500.00	037.52	$1,112.80	3,000	2,093.61

For each of the above years, Teitelbaum made payments on declarations of estimated tax, reported total tax due on his returns filed for those years, paid the balance due as indicated, or [R. 1312] claimed overpayments on his returns filed for those years as follows:

Year	Payments on estimated tax	Total tax liability	Balance due	Overpayments
1944	$1,625.10	$1,717.32	$92.22	
1945	1,717.32	2,305.79	588.47	
1946	1,954.35	1,663.55		$290.81
1947	1,663.55	399.56		1,263.99

Teitelbaum and respondent executed a series of consent agreements with respect to each of the years 1945, 1946 and 1947 pursuant to section 276(b) of the Internal Revenue Code of 1939, extending to June 30, 1952, the time within which the commissioner might assess additional income taxes for the years 1945, 1946 and 1947. On December 21, 1951, the re-

spondent assessed deficiencies in income tax, penalties and interest thereon, pursuant to the provisions of section 273 of the 1939 Code, for each of the years 1944 to 1947, inclusive.

On January 22, 1953, an indictment was returned in the District Court for the Northern District of Illinois, Eastern Division, by the Grand Jury, charging Teitelbaum with attempting to defeat and evade the income taxes of Tyted for the years 1946 and 1947 (counts 1 and 2); the income taxes due and owing by himself for the years 1946 and 1947 (counts 3 and 4); and the income taxes of Melnick for the years 1946 and 1947 (counts 5 and 6); all in violation of section 145(b) of the Internal Revenue Code of 1939. Teitelbaum, upon his plea of not guilty, [R. 1313] was tried before a jury which returned a verdict of guilty on each count of the indictment.

Sometime in 1947 Teitelbaum became interested in acquiring a residence in California. He met the owner of a date farm, hereinafter referred to as the Date Farm, near Indio, California, who desired to sell his farm. Teitelbaum understood that the Date Farm had been operated at a profit during the war years, that the price of dates during that period was favorably high, and that the then owner had used the substantial residential facilities for extensive entertaining. The ten to eleven acre property consisted of a main house with a large high-ceilinged living room, about 40 feet by 60 feet, which contained two fireplaces, a guest house, swimming pool, pool house, servants' house, caretaker's house, Mexican house for the farm laborers, 300 date trees covering about 6 or 7 acres, and about 2½ acres of grapefruit. During the first years following the war, the price of dates had declined so that the operation of date farming and extensive entertaining at the Date Farm resulted in an overall loss for the most recent year. Teitelbaum was informed that this loss would be claimed as a business loss for tax purposes by the then owner. Petitioner contacted the Date Growers' Association in California and sought information concerning date prices. In 1947 there was a decline in the domestic price of dates due in part to importing of dates from foreign countries which began that year.

[R. 1314] In the early part of 1948 Teitelbaum and Melnick purchased the Date Farm for a total consideration of $127,372.09. Of the total purchase price, $21,000 was allocable to the land, $17,500 to the date trees and related improvements, and at least $88,872.09 to the residence and related improvements. Petitioner maintained two automobiles at the Date Farm. One, a station wagon, was used primarily although not exclusively, for farming operations, whereas the other, a Cadillac, was held primarily for personal use. Melnick used the Date Farm as her personal residence from the time it was acquired although a house in Los Angeles was rented during the hot season because the heat became too intense. Petitioner realized a loss from the operation of the Date Farm during 1948 and deducted the full amount as a business loss on the partnership return filed for that year.

In 1949 Teitelbaum became permanently separated from his first wife, petitioner Melnick, who resided continuously thereafter at the Date Farm. No adequate records were maintained by either Teitelbaum or Melnick for the operation of the date farming. Expenses and accounts of both the residence and the farming operation were commingled. Total expenses incurred during the period 1949 to 1951, inclusive, with respect to the Date Farm and the portion of those expenses properly allocable to the farming operation were as follows:

[R. 1315]

Year	Total expense	Expenses attributable to farming operation
1949	$25,886.97	$12,108.76
1950	26,900.28	9,468.55
1951	25,901.99	11,859.52

Petitioners reported gross receipts from the operation of the Date Farm for the years 1949, 1950 and 1951 in the amounts of $9,330.80, $3,650, and $3,250, respectively. Net operating losses attributable to the Date Farm for the years 1949 to 1951, inclusive, in the amounts of $15,511.67, $21,730.50, and $21,898.39, respectively, were claimed as losses

from the operation of a business for tax purposes on the returns filed for those years.

During the years 1949, 1950 and 1951, Teitelbaum and Melnick were partners in a partnership known as Teitelbaum and Simon. Together they were entitled to 50 per cent of the net income of the partnership. The Teitelbaum and Simon partnership filed partnership returns for the years 1949 and 1950 with the then collector of internal revenue, Chicago, Illinois, and for the year 1951 with the director of internal revenue, Chicago, Illinois.

The partnership of Teitelbaum and Simon claimed a deduction on its 1950 return for the conversion of electricity in the Fine Arts Building from direct current (D.C.) to alternating current (A.C.). This conversion was accomplished pursuant to an ordinance of the City of Chicago. Although the conversion did [R. 1316] not increase the value of the building as such, it did affect the amount which a buyer would be willing to pay for the building. The conversion from D.C. to A.C. was completed during the year 1950. Commonwealth Edison Company of Chicago assumed a portion of the cost of conversion. The total cost of the conversion of the building was as follows:

Conversion of Electricity From D.C. to A.C. Pursuant to Ordinance City of Chicago

Sums disbursed to:		
Mead Electric Co		$79,490.00
Chicago Elevated Corporation		32,918.00
Vault		21,577.00
Total		133,985.00
Portion assumed and paid by Commonwealth Edison Company:		
Mead Electric Co	$36,427.20	
Chicago Elevated Corp	13,167.20	
Vault	21,577.00	
		71,171.40
Balance		62,813.60
Additional work at our expense		17,138.06
		79,951.66

This liability discharged by the Commonwealth Edison Company taking a second mortgage in the sum of $79,951.06 dated 5–17–50.

Additional disbursements:	
Spitz & Spitz, architects	$2,500.00
Work	2,000.00
Extras	700.00
Total	85,151.66

The amount of $79,951.66 was claimed as an expense on the tax return filed by the Teitelbaum and Simon partnership rather than as a capital expenditure.

[R. 1317] The respondent disallowed the amount of $79,951.66 as a deduction for the year 1950 and the additional disbursement of $2,000 because it related to the conversion work from D.C. to A.C. The remaining $3,200 was not directly related to the conversion work. The Fine Arts property placed a second mortgage on the premises in the total amount of $79,951.66 to secure the payment of the balance of the conversion cost. This mortgage was executed by the La Salle National Bank as trustee at the direction of Teitelbaum.

The Teitelbaum and Melnick partnership return filed for the year 1949 contains a deduction for salaries and wages which is $1,000 in excess of the amount paid. Teitelbaum paid Harry Novitsky $1,900 during the year 1949 for his services as a handy man and janitor of the Douglas Building. The follow- schedule shows general professional expenses claimed in the Teitelbaum and Melnick partnership return for 1949, the amount of those expenses allowed by respondent and the amount disallowed:

Item	Claimed	Allowed	Disallowed
Entertainment, Gratuities, etc.	$4,778.99		$4,778.99
Travel	5,841.37	$321.58	5,020.79
Hotel Blackstone	3,907.07		3,907.07
Other Hotels	250.86	101.21	149.65
Union Dues and Expenses re Chicago Rest. Assn.	4,872.59	3,852.59	953.00
Total	19,120.88	4,274.38	14,846.50

[R. 1318] Total deductions claimed on the Professional Income and Expenses schedule for 1949 were $57,079.16, or which respondent disallowed $14,846.50, as indicated above. Expenses of the Teitelbaum and Melnick partnership for the year 1949 did not exceed $42,232.66.

During 1949 Teitelbaum received three $2,500 payments of interest on the $250,000 note of the Roosevelt College. During that period Teitelbaum was negotiating with the College for the sale of the note. The note was sold in 1949 for $190,000. Teitelbaum reported the selling price as $197,500 on the return filed for the year 1949, but reported no interest income for that year. The capital gains schedule contained the explanation that the $7,500 interest was treated as principal pursuant to an agreement between the seller and purchaser. Respondent reduced the selling price of the note by $7,500 and increased the capital loss reported from the transaction to $10,000.

During the year 1950, the amount of fees paid to Teitelbaum and Melnick by the Chicago Restaurant Association was increased to $101,200. The 1950 partnership return of Teitelbaum and Melnick includes in the schedule of professional receipts the following:

Chicago Restaurant Assn.	$101,200	
Less: Special Disbursement at direction of Association	10,000	
		$91,200

The return does not disclose to whom or for what purpose the $10,000 was paid; neither does the work sheet from which the [R. 1319] accountant prepared the return. However, a separate work sheet of the accountant for 1950 contains the statement "Deduct To Dan Gilbert For Rest. Assn. $10,000.00" and the net amount of $91,200 is shown in the column containing the fees from the Chicago Restaurant Association. Teitelbaum had told the accountant that he, Teitelbaum, had made a campaign contribution, at the direction of the Chicago Restaurant Association, to Dan Gilbert, who was seeking election as Sheriff of Cook County.

Teitelbaum had requested a repayment of $10,000 from the Chicago Restaurant Association, discussed the matter with one of the officers of the association and received the following reply:

> This letter is to advise you that our Board of Directors will not authorize the repayment of the $10,000 which you gave to the States Attorney's Investigator,

Mr. Dan Gilbert in 1950. As we discussed, probably the money was used in his political campaign for Sheriff of Cook County.

We understand that you needed him to help remove the pickets from the Regent Drug Store at the Sherman Hotel. Also, you told me that the demand, made by Mr. Gilbert, was on the Association.

It has been the policy of the Chicago Restaurant Association, as you well know, that this expense, as well as expenses for union periodicals, subscriptions, dues, travel expenses, entertainment of union representatives and officials, strike expenses, hiring of additional attorneys, labor experts and all other expenses, in connection with your position as our labor counsel, are to be borne by you. These expenses are considered a part of your annual retainer fee.

Your request for reimbursement is regretfully declined. Neither the officers nor members of the association knew of any actual payment of $10,000 to Dan Gilbert in 1950.

[R. 1320] Dan Gilbert was chief investigator in the States Attorney's office for Cook County, Illinois, in 1950, a position which he had held for 18 years. When he sought election as Sheriff of Cook County in 1950 he had a campaign fund of which he was in charge. He knew of no payment received from either Teitelbaum or his employees, Louis Romano or Eugene Bernstein, nor did he solicit funds directly from the Chicago Restaurant Association.

Petitioner's attorney, Eugene Bernstein, prepared the Teitelbaum and Melnick partnership returns and the joint income tax returns for the year 1950. On the return filed for the year 1950, Bernstein qualified his signature with the statement "Based on records submitted." Those returns were timely filed on March 15 following the close of the taxable years.

Bernstein prepared schedules contained in the 1951 partnership return, but did not prepare all of the return or sign his name to the return as the party responsible for its preparation. The professional income schedule filed with the 1951 partnership return was prepared in a different manner than were the

other schedules and filed as an original instead of a carbon copy as the other schedules were filed. At least part of the professional income schedule was prepared by Bernstein. Professional receipts from the Chicago Restaurant Association totaled $124,800 for the year 1951. This amount was reported in the following schedule of Professional Income and Expenses:

[R. 1321] ABRAHAM AND ESTHER M. TEITELBAUM

20 East Jackson Blvd., Chicago 4, Ill.

Addenda, Form 1065, Year 1951

Professional Income:		
Chicago Restaurant Association	$75,000.00	
Special Expense Allowance in connection with retainer as labor relations counsel	49,800.00	$124,800.00
Edgewater Beach Hotel		5,000.00
Orrington Hotel		480.00
Georgian Hotel		750.00
Galler Drug Co		1,000.00
Allerton Hotel		2,500.00
Harding Brothers & Williams		3,000.00
Schwartz and Cooper		400.00
		137,930.00

Disbursements:

Salaries:

	Add. W. Tax		
Adeline Weiner	$100.00	$1,485.00	$1,585.00
Joan Dillon	30.00	270.00	300.00
Patricia Ann Kurey	65.00	585.00	650.00
Michael Romano	$100.00	900.00	1,000.00
			3,535.00

General Deductions:

Attorney Fees:	
Eugene Bernstein	$250.00
Max A. Reinstein	1,000.00
Morris Teitelbaum	4,000.00
Charles Kirschbaum	60.00
Sutherland, Tuttle & Brennan	12,500.00
Sutherland, Tuttle & Brennan Exp	264.40

General Deductions—Continued	
Bar Associations:	
Chicago Bar Association	**$90.00**
American Bar Association	**12.00**
Womens Bar Association	**10.00**
Illinois State Bar Association	**15.00**
Bank Charges—Exchange National Bank	**66.64**
Meals—re: picking up checks of clients etc	**2,447.89**
Automobile Expense	**500.00**
Employment Agency Fee	**97.50**
Florist—Central Floral	**20.40**

[R. 1322]

Stationery	150.00
Passport	10.00
Postage	50.00
Telephone	3,081.60
Travel, Transportation, Hotels, etc.	13,240.27
Food 100 days at $10.00	1,000.00
Typewriter Service	17.50
Union Dues and Expenses—Labor Relations Expert	17,000.00
Investigators Fees, etc.	7,800.00
Towels	45.00
Water	98.39
Addenda, Form 1065, Year 1951 (Page 2)	
Miscellaneous—Vault	19.00
Repairs—Furniture in Office:	
M. Kane & Son	506.00
Theo. S. Liss	150.00
Jos. H. Optner	600.00
Advertising in year book, etc.—Cooks Union, Bartenders Union, Waiters Union, Misc. Unions and for special promomotional work among unions, union officials, union agents, and representatives as contemplated in expense retainer of Chicago Restaurant Association, and included above in professional income section.	49,800.00
Special Police work	1,000.00
Business Promotions, entertainment of clients, etc not included in above 5% of $88,130.00	4,406.50
Total other deductions	120,308.09

The total fee of $124,800 which Teitelbaum received from the Chicago Restaurant Association was intended to be adequate to meet expenses such as dues, entertainment, and request for advertising, when demand for them was made by other organizations dealing with the association. However, no specific amount [R. 1323] was ever designated by the association as an expense allowance during the period 1949 to 1951, inclusive.

In 1951 there were 12 local unions associated with the Local Joint Executive Board of the Hotel and Restaurant Employees and Bartenders International Union. Nine of these local unions did not publish ad books, buyers' guides or program books in 1951. Of these nine unions, one union had a fund raising affair, a dance. Three other unions had ad books. William Friedman handled the fund raising for the union which had the dance and two of the unions which had ad books. All such monies went directly through his hands. Friedman received no money from Teitelbaum or his associate, Louis Romano, both of whom he knew, in 1951. With respect to the only other local which maintained an ad book in 1951, it received no money from Teitelbaum for advertising in its year book or for any other purpose in that year. Teitelbaum did not expend sums for advertising in union year books during the year 1951 as claimed on the return filed for that year. Teitelbaum personally prepared that part of the Professional Income and Expenses Schedule which indicated a breakdown between expense allowance and payment for services of the fee received from the Chicago Restaurant Association and the $49,800 deduction for advertising and special promotional work.

Teitelbaum maintained a house in Chicago as a personal residence in the years 1949, 1950 and 1951. A portion of the [R. 1324] amount deducted by him in 1951 for "Travel, Transportation, Hotels, etc." represented expenditures at the Blackstone Hotel, Chicago.

Teitelbaum sold his interest in the Douglas Building in 1951 for $600,000. Of this amount $191,419.02 was reported as gain on the sale in the 1951 income tax return and included in Teitelbaum and Melnick partnership income for that year.

On a schedule attached to the return, this gain was computed in the following manner:

[R. 1325] ABRAHAM AND ESTHER TEITELBAUM

20 East Jackson Blvd., Chicago 4, Ill.

Addenda, Form 1065, Year 1951

Schedule D: Long Term Capital Gain:			
Property located at 20 East Jackson Blvd.			
Acquired, 6/ /44			
Sold, 12/1/51			
Cost:			
Winston, Strawn & Shaw		$39,000.00	
Missouri Kansas Life Ins. Co. (Leasehold)		5,000.00	
Baird & Watner		500.00	
General Property Taxes, for period prior to acquisition	$25,000.00		
	40,844.61		
	13,000.00		
	5,646.29		
	5,646.29		
		90,137.19	
Chicago Title & Trust Co.		1,067.00	
La Salle National Bank Trustees fees		347.00	
Attorneys fees re tax settlement:			
John S. Boyle	$4,000.00		
Darrow, Smith & Carlin	2,500.00		
		6,500.00	
			$142,551.19
Subsequent Additions & Improvements:			
1-16-48: Plumbing	$515.00		
1949:			
Construction of office, Room 1105	17,751.39		
Mail Chute	890.00		
Ben Boshes, Contractor	22,800.00		
South Shore Iron Works, West Wall	203.00		
Granix Co. Front of Bldg.	1,000.00		
American Glass Co.	3,000.00		
1950:			
Spitz & Spitz, Architects fees	2,300.00		
Granix Co.	2,794.20		
1948-51: Leasehold improvements	2,855.34		

[R. 1326]

1951:			
American Glass Co	$3,000.00		
Ben Boshes, General Contractor	5,500.00		
John Baretti & Co. Terrazo Contract	550.00		
			$463,738.93
			206,110.12
Less: Depreciation reserve 12-31-51			31,255.17
			174,854.95
Sales price		$600,000.00	
Less: Expenses of sale, etc.			
Commission:			
Henry Kopp	$1,500.00		
Al Sokolsky	3,500.00		
	5,000.00		

Addenda, Form 1065, Year 1951

Schedule D: Long Term Capital Gain (Page 2)			
fwd	$5,000.00	$600,000.00	$174,854.95
Capital expenditures in connection with 20 E. Jackson Blvd. Bldg. as to costs and improvements not previously taken as an expense or Capital items 5-1-44 to 12-31-51—upon review of costs, I find the amount to exceed $200,000.00. Expenditures can be verified by Spitz & Spitz, Architects and others. Expenditures include additional costs in acquiring title, buying out associate on contract, attorney fees and other costs and expenses not heretofore deducted			200,000.00
Total Costs			$374,854.95
Expenses of Sale, etc. (cont.)			
Allowance to purchaser in reduction of sale	6,000.00		
Revenue Stamps	419.10		
Title Expenses	1,454.50		
Exchange National Bank, Trustee's fees	35.00		

[R. 1327]

*Junior mortgage discount allowed to purchaser on discharge of mortgage	$20,817.43	$333,726.03
Net Proceeds on Sale		506,273.97
Total Costs as Above		374,854.95
Net Capital Gain		191,419.02
Junior Mortgage—Purchase money mortgage		130,753.96
Less: Applied on prorations to purchaser		6,436.53
Net		124,317.43
Discount subsequently allowed to purchaser to discharge mortgage		20,817.43
Net		103,500.00

As in the case of the Professional Income and Expenses Schedule, Bernstein prepared only part of the above schedule. Page 2 was prepared by Teitelbaum. Bernstein had prepared a complete Schedule D showing the capital gain for the Douglas Building. However, the complete schedule prepared by Bernstein was not submitted with the return. The information appearing on the first page of Schedule D as prepared by Bernstein included all costs and subsequent additions to the Douglas Building of which he had information. Bernstein understood that those items on page 1 represented the total basis of the Douglas Building.

The depreciation schedule for the Douglas Building filed with the 1951 tax return is as follows:

[R. 1328] Abraham and Esther Teitelbaum

20 East Jackson Blvd., Chicago 4, Ill.

Addenda, Form 1065, Year 1951

		Douglas Building					
		Acquired	Cost	Rate	Reserve 1-1-51	Depr 1951	Reserve 1-1-52
Depreciation Schedule							
Building as per Engineering valuation report 1-20-49		6- 1-44	$66 405 73	4	$17 785 49	$2 736 24	$20 521 72
Additions Plumbing repairs (as agreed R &)		1-16-48	915 00	4 651	127 68	42 56	170 24
Additions to Building—Construction two of Office Room 1105							
Walsh Const Co. (Genl Contr)	$4,900 00	5-27-49					
Walsh Const Co (Genl Contr)	1,900 00	6-28-49					
Walsh Const Co (Genl Contr)	310 00	6-28-49					
Hamilton Glass Co	1,830 00	6-28-49					
Roberts Stage Elec Co	650 00	6-28-49					
P J Brown, Plumbing	770 00	6-28-49					
Lyons Co Ceiling	984 00	6-28-49					
Air Comfort Corp Air conditioning	2,270 00	6-28-49					
Hawkins Electric Fixtures	232 87	6-28-49					
Hunter Clark Ventilating	164 81	6-28-49					
Ben Rose, Drapery material	466 75	6-28-49					
Condon Co Hanging drapes	162 85	6-28-49					
Beverly Tile Co	201 20	6-28-49					
Frank Welch & Co. Couch	503 80	6-28-49					
Spitz & Spitz, Architects	1,530 00	6-28-49					
Rodlin & Rodlin Painter	301 25	6-28-49					
Installation 3 double door windows—aluminum	925 00	9- -49					
Aluminum Arch Prof Windows	450 00	9- -49					
Covering Accoustel "B"	94 00	10-4-49	17 751 39	12½	2 328 38	2 219 92	5 547 30

[R. 1329]

Mail Chute installation		10- -49	800 00	5	55 50	44 50	100 00
Ben Boshes		12- -49	6,000 00	5 05	303 00	303 00	606 00
So Shore Iron Works, west wall		4- -50	203 00	5 2	7 04	10 56	17 60
Granix Co Front of Bldg		4- -50	1,000 00	5 2	39 00	52 00	91 00
Ben Boshes		12- -49	10,000 00	5 05	505 00	505 00	1,010 00
"		12- -49	6,800 00	5 05	343 40	343 40	686 80
American Glass		12- 49	3,000 00	5 05	151 50	151 50	303 00
Spitz & Spitz, Architect Fees		6- -50	2,300 00	5 2	59 80	119 60	179 40
Granix Co		2- -50	2,000 00	5 2	99 00	104 00	203 00
Granix Co		3- -50	796 20	5 2	31 00	41 30	72 30

Addenda, Form 1065, Year 1951

		Douglas Building					
		Acquired	Cost	Rate	Reserve 1-1-51	Depre. 1951	Reserve 1-1-52
Leasehold Improvement:							
R. 1406-7 Lease 9-1-48 to 8-3-50 (Agreed R.A.)		10-27-48					
R-1408 Lease 4-1-49 to 3-31-50 (Agreed R.A.)			$300.00	50	$300.00		$300.00
1301-5 Lease 4-1-50 to 4-30-53		4- -50	775.79	5314	172.42	$258.59	431.01
3rd fl. " 5-1-50 to 4-30-52		4- -50	902.69	50	300.90	451.35	752.25
601-2 " 8-1-50 to 9-30-53		8- -50	169.08	3314	18.75	56.35	75.13
1005 " 2-16-51 to 3-31-56			476.55	19.51270		81.43	31.43
903 " 2-1-51 to 1-31-53			231.25	50		106.99	106.99
					23,627.89	7,627.28	31,255.17

		Date	Amount		Reserve 1-1-51	Amortized 1951	Reserve 1-1-52
Amortization Schedule:							
Amortization-Expense Financing:							
Commission:							
Irwin Jacobs & Co			$2,000.00				
Survey			150.00				
Misc			3.05				
C.T. & T. Co. Title charges, etc.			810.40				
Total		5- -48	2,963.45		$777.91	$296.35	$1,074.26
10 year loan—5-15-48 to 5-15-58							

[R. 1330] Revenue Agent Paul Tillotson, hereinafter sometimes referred to as Tillotson, examined petitioner's joint income tax return and the partnership return of Teitelbaum & Melnick for 1951. Attempting to verify the $200,000 additional basis claimed on the sale of the Douglas Building in the 1951 Teitelbaum & Melnick return, Tillotson called on petitioner in September or October of 1953. Petitioner advised Tillotson he would get these records but nothing was made available on Tillotson's various visits until the fall of 1954. In the fall of 1954 petitioner referred Tillotson to Spitz & Spitz (petitioner's architects who handled some remodeling of the Douglas Building).

Tillotson obtained a list from Spitz & Spitz in petitioner's handwriting. He borrowed the list together with the file, made copies of the handwritten list and had a tabulation made

of the petitioner's documents in Spitz & Spitz's file. In September 1955 Tillotson revisited Spitz & Spitz at which time they had no records, but when Tillotson returned in a few days Spitz & Spitz gave him a three-page handwritten list which had been obtained from petitioner. The three-page list of 1955 was almost identical with the earlier 1954 list.

The following shows the two lists given to Tillotson:

[R. 1331]

Description of item	List of 1955	List of 1954
Loss Banana Deal		$35,000
Edlin Loss—30 N. Dearborn		5,000
Elevators	$14,000	14,000
Elevator Doors	1,500	1,500
A. T. Office, Rm. 1105	29,000	29,000
New Front	35,000	35,000
Remove Cornice & Roof	12,500	12,500
Freight Elevator	3,000	3,000
New Motors	2,500	2,500
Water Tanks Relined, etc	750	750
Roof	2,000	2,000
Mail Chute & Inst'l	1,000	1,000
Valves Rooms & 3 Tanks Lines	1,000	1,000
Plumbing for 2nd Floor New Toilet	500	500
Construction Work Basement for Shoe Store	3,000	3,000
Stan Raddick Alley Guards	500	500
Furniture in Edlin Office	3,000	3,000
Furniture in A.F. of L. Office	1,500	1,500
Furniture in Ladies Washroom	175	175
Gears for Elevators 48 doors	240	240
Painting Drop Cloths	150	150
Const. Stock & Tool Room	1,000	1,000
Tools, Stock, Paint, Brushes, etc	2,000	2,000
Electric Modernization First Floor		2,000
Drain Pipe (New)	700	700
Remove Old Sprinkling System	500	500
Taylor Trunk Penalty for Noncompletion of Front	750	750
Kasnow Fur Allowance on Job	1,500	1,500
Miscellaneous Improvements From 1944 to Dec. 1952	over 60,000	60,000
Rest Rooms for Employees	2,000	
Office	1,000	
Sewers Street		
Tuck Pointing		
Architect	4,280	
Total	185,045	220,565

[R. 1332] Spitz & Spitz, architects, had conducted the remodeling of the office and the lobby of the Douglas Building. The lobby alterations included work done by Ben Boshes, general contractor, and the American Glass Company. The total amount spent by petitioner through Spitz & Spitz, architects, was approximately $60,000, of which about $40,000 was for the lobby and about $20,000 for the remodeling of an eleventh floor office.

The cornice of the Douglas Building was removed by the United Construction Company under direction of Spitz &

Spitz at a cost of $3,220. This amount was expensed in the 1949 Teitelbaum & Melnick return. Teitelbaum was required to obtain a building permit to enable him to have work done on the cornice, which permit cost two dollars. There were no extra payments for this permit.

A mail chute, installed for a cost of $890, was added to the basis of the building on the 1949 return. Kasnow furriers rented space in the Douglas Building and had plumbing work done in that portion of the building rented by them, for which they paid the total bill. Teitelbaum allowed Kasnow furriers a $500 concession toward rental payments for the plumbing expenses.

All costs incurred in connection with the Douglas Building remodeling were either recorded as expenses by Willoughby [R. 1333] (with the result that they were expensed on the Teitelbaum and Melnick partnership tax returns) or had been previously capitalized in tax returns filed for years prior to 1951.

In addition to the two lists furnished Tillotson, by Willoughby or petitioner, Teitelbaum told Tillotson that a portion of the $200,000 was $60,000 extra legal expenses which he had incurred in connection with clearing back taxes for the Douglas Building upon acquisition.

During 1951 petitioner repaid loans of $10,000 to Emil Wolper and $50,000 to William J. Bressler. In addition to repayment of the above loans, Teitelbaum paid Bressler $2,500 interest in 1951 on the loan liquidated in that year.

During the year 1950 the stock of the Metropolitan Radio Corporation of Chicago, Inc., hereinafter referred to as Metropolitan, which owned and operated station WMOR, an FM radio station was held by various individuals including Donald F. Kiesau and Daniel L. Toffenetti, officials of the Chicago Restaurant Association. Sometime in 1951 Kiesau, Toffenetti and others, aware that the corporation was proceeding to insolvency, sold their stock to Teitelbaum at about ten cents on the dollar. Teitelbaum intended to help Kiesau and Toffenetti by taking the stock off their hands.

Teitelbaum expended money out of the Teitelbaum and Melnick account for purposes of paying certain bills, salaries,

[R. 1334] and wages of Metropolitan. Additional checks were drawn on the Metropolitan account, some of which were not negotiated. Teitelbaum advanced a total of at least $48,289.83 to pay expenses of Metropolitan. Of this amount, $20,901.94 was deducted as expenses on the Teitelbaum and Melnick partnership returns for 1950 and 1951.

On March 19, 1952, a petition was filed by Metropolitan in the District Court of the United States for the Northern District of Illinois to have it adjudicated bankrupt. On April 18, 1952, the United States District Court adjudicated Metropolitan a bankrupt. Included in a list of claims filed against Metropolitan was an item classified as loans from Teitelbaum in the amount of $71,213.18.

On the joint 1951 individual income tax return filed by Teitelbaum and Melnick, a loss was claimed for the following item:

> RADIO STATION W.M.O.R.:
> I advanced the sum of $71,213.18 to discharge the payroll debts, rent, taxes due to the government for Social Security and Withholding taxes of F.M. Radio Station, operated by myself. The corporate name was merely retained as a legal convenience and the station was never operated as a corporation. No income was received and funds were advanced by myself personally 71,213.18

In September or October 1953, Teitelbaum gave to Paul Tillotson, the revenue agent investigating the Teitelbaum returns, an envelope which contained several papers, cancelled [R. 1335] and uncancelled checks drawn on the Metropolitan bank account which had not been negotiated, and a typewritten list of expenditures entitled "Station W.M.O.R." which totalled $64,334.74.[1] The typewritten list represented checks drawn on the Teitelbaum and Melnick account and made payable to various individuals, as well as cash items. Of the total, the amount of $22,269.88 did not constitute expenses of station WMOR. In addition, $20,901.94 of the listed amount had been deducted previously by Teitelbaum and Melnick on the 1950 and 1951 returns.

[1] Later adjusted by Tillotson to $70,559.71.

Teitelbaum did not file estimated tax returns for the year 1951.

On September 27, 1955, an indictment was returned in the District Court for the Northern District of Illinois, Eastern Division, by the Grand Jury, charging Teitelbaum with attempting to evade and defeat the joint income taxes owing by himself and Melnick for the years 1950 and 1951 (two counts). On August 29, 1956, Teitelbaum entered a plea of nolo contendere upon which he was found guilty on both counts by the Court. Judgment and order of probation was entered by the Court on October 4, 1956.

[R. 1336] In the statutory notices of deficiency for the years 1944, 1945, 1946, 1947, 1949, 1950, and 1951, respondent made the following adjustments in petitioner's net income, which adjustments were based upon respondent's determination of unallowable deductions and additional income:

[R. 1337]

1944		
Rental income—Douglas Building		$7,363.25
Receipts from Chicago Restaurant Association		2,000.00
Other adjustments		74.90
Total increase to partnership net income		9,438.15
Increase in petitioner's distributive share (50%)		4,719.08
1945		
Rental income—Douglas Building	$25,382.80	
Rental income—50% interest in Fine Arts Building	29,811.81	
		55,194.61
Receipts from Chicago Restaurant Assn		2,000.00
Other adjustments		3,258.53
Total increase to partnership net income		60,453.14
Increase in petitioner's distributive share (50%)		30,226.57
1946		
Rental income—Douglas Building	$27,866.57	
Rental income—50% interest in Fine Arts Building	52,526.06	
		80,392.63
Receipts from Chicago Restaurant Assn		2,000.00
Other adjutsments		3,720.13
Total increase in partnership net income		86,112.76
Increase in petitioner's distributive share (50%)		43,056.39
1947		
Rental income—Douglas Building	$61,955.56	
Rental income—50% interest in Fine Arts Building	74,217.15	

Total rental income	$136,172.71	
Rental income reported	14,716.40	
Increase in rental income		$121,456.31
Receipts from Chicago Restaurant Association		4,000.00
Long-term capital gain realized on sale of portion of Fine Arts Building		14,371.04
Interest income		6,250.00
Other adjustments		5,094.86
Total increase in partnership net income		151,172.21
Increase in petitioner's distributive share (50%)		75,586.10

[R. 1338]

1949

A. Teitelbaum & Melnick partnership directly:		
1. Salaries and Wages (Douglas Building)		$1,000.00
2. Maintenance, etc. (Douglas Building)		1,900.00
3. General Expenses		
a. Entertainment & Gratuities	$4,778.99	
b. Travel	5,020.79	
c. Hotel Expenses	4,096.72	
d. Union Dues and Expenses	950.00	
		14,846.50
4. Real Estate Refund		647.15
5. Farm Loss		15,511.67
6. Interest Income (the capital loss reported from this transaction was accordingly increased from $2,500.00 to $10,000.00)		7,500.00
Total		41,405.32
B. Teitelbaum & Simon partnership:		
7-A. Recovery of Fire Loss ($14,854.21 received less $9,819.34 replaced)		5,034.87
7-B. Real Estate Tax Refund		1,725.54
7-C. Reimbursed Conversion Costs ($29,459.11 received less $13,500.00 expended)		15,959.11
		22,719.52
7-D. Less Additional Depreciation		428.32
		22,291.20
One-half to Teitelbaum & Melnick		11,145.60

Total of A and B above:

A	$41,405.32	(Statement attached to Notice of Deficiency)
B	11,145.60	
Total	52,550.92	

1950

A. Teitelbaum & Melnick partnership directly:		
1. Professional Receipts:		
a. Chicago Restaurant Association	$10,000.00	
b. Harding & Williams	200.00	
		$10,200.00
2. Interest Expense		2,000.00
3. Entertainment		4,141.00
4. Gratuities		4,600.00
[R. 1339]		
5. Travel—Transportation		6,076.38
6. Hotels		1,773.36
7. Union Dues and Expenses		1,500.00
8. Investigation Fees, etc		7,875.00
9. Miscellaneous (political campaign)		670.00
10. Douglas Building—Expense and Amortization		155.38
11. Real Estate Tax Refund		637.01
12. Farm Loss		21,730.50
Total		61,358.63
B. Teitelbaum & Simon partnership:		
13–A. Conversion Cost from DC to AC		67,313.60
13–B. Interest on Conversion		17,138.06
13–C. Real Estate Tax Refund		1,698.44
		86,150.10
13–D. Less: Additional Salaries & Wages	$10,000.00	
13–E. Additional Depreciation	2,505.91	
		12,505.91
Net Adjustments to Teitelbaum & Simon		73,644.19
One-half to Teitelbaum & Melnick		36,822.10
Total of A and B above:		
A	$61,358.63	
B	36,822.10	
Total	98,180.73	(Statement attached to notice of Deficiency)

1951

Net income reported: Loss		($9,771.13)
A. Disallowed loss claimed by petitioner in connection with radio station WMOR		71,213.18
B. Increase of net long-term capital gain:		
1. From sale of Douglas Building:		
a. Improvements capitalized in 1950 and again in 1951	$8,500.00	
b. Claimed additional cost unsubstantiated	200,000.00	

[R. 1340]

c. Discount on junior mortgage	[1] $20,817.43	
d. Financing cost understated [1]	(646.22)	
		$228,671.21
2. Disallowed loss on WMOR stock		6,200.00
Total		234,871.21
50% thereof		117,435.60
C. Teitelbaum & Melnick partnership income:		
1. General deductions		77,408.77
2. Professional income understated		300.00
3. Disallowed interest expense		4,500.00
4. Rental income increased by overstating:		
Interest	$2,500.00	
Amortization	2,044.12	
		4,544.12
5. Farm loss disallowed		21,898.39
Total		108,649.28
D. Teitelbaum & Simon partnership:		
6-A. Conversion costs reimbursed		3,273.47
6-B. Attorney & professional expense disallowed		500.00
		3,773.47
6-C. Less additional depreciation		3,862.44
Total (Decreased income)		(88.97)
One-half to Teitelbaum & Melnick		(44.49)
Total of A, B, C and D above	$297,253.57	
Net loss reported	9,771.13	
Adjusted gross income	287,482.44	
Less: Standard deduction	1,000.00	
Net income corrected	286,482.44	(Statement attached to Notice of Deficiency)

[1] The statement attached to the notice of deficiency contains two typographical errors. The $20,000.00 should read $20,817.43 and the word overstated should read understated. The net adjustment is in fact $228,671.21 as shown in the statement and upon which the tax was computed.

[R.1341] Petitioners' failure to file estimated tax returns for the year 1951 was not due to reasonable cause but due to willful neglect.

A part of the deficiency for each of the years 1946, 1947, and 1951 was due to fraud with intent to evade tax. No.

part of the deficiency for each of the years 1944, 1945, and 1950 was due to fraud with intent to evade tax.

OPINION

Docket No. 40590

Petitioner raised only three issues with respect to the years 1944, 1945, 1946, and 1947. For each of those years he specifically denied that a part of the deficiency for each of the years 1944, 1945, 1946, and 1947 was due to fraud with intent to evade the taxes. He alleged that certain bonus payments received from the Chicago Restaurant Association were gifts and not income, and he alleged that he had improperly included in ordinary income gain from the sale of a capital asset. No evidence was submitted concerning the capital gain dispute. Therefore, the respondent must be sustained on that issue. The only evidence submitted concerning the Christmas bonuses established that they were not gifts, as alleged by petitioner, but reimbursements for expenses, which expenses petitioner deducted on the partnership tax returns filed for those years. The respondent has abandoned the fraud issue for the years 1944 and 1945.

[R. 1342] In his determination of deficiencies for 1946 and 1947, respondent included in the income of the Teitelbaum and Melnick partnership the net profits from the operation of the Douglas Building and the Fine Arts Building, and treated one-half of that amount as the distributive share of petitioner. This determination was based in part on the theory that the corporate entity, Tyted, was a mere sham. Petitioner does not contest this determination. As a result, the respondent's deficiency determinations for 1946 and 1947 are sustained in this respect.

Respondent affirmatively plead in his answer that the Teitelbaum and Melnick partnership or Teitelbaum, individually, received distributions in the nature of dividends from Tyted, which were not reported by either the partnership or Teitelbaum as income. In support of this theory, respondent placed in evidence a series of checks representing withdrawals from the Tyted account and from the operating accounts of the

Douglas and Fine Arts Buildings, which checks were payable to a variety of payees, including the Teitelbaum and Melnick partnership and Teitelbaum individually. These checks are set forth in our findings of fact. The respondent determined that all of these checks, other than those payable to Bessie Simon, were for the benefit of either the partnership or Teitelbaum individually and, as part of his fraud determination, [R. 1343] treated them as unreported income of petitioner or the partnership. We have found previously that these amounts in fact were unreported by either Teitelbaum or the partnership. However, included in the list of withdrawals were checks payable to persons other than the Teitelbaum and Melnick partnership or Teitelbaum individually. The respondent has offered no proof that these other checks were paid for the benefit either of the partnership or Teitelbaum. A different situation exists with respect to the checks made payable directly to the Teitelbaum and Melnick partnership or to Teitelbaum individually. The fact that the checks were so drawn is prima facie evidence that the amounts involved were paid for the benefit of the recipients and, thus, their income. The petitioner has offered no evidence to the contrary.

On the basis of the entire record, including petitioner's manipulation of Willoughby's reports with respect to Tyted, and the unexplained checks payable to either the Teitelbaum and Melnick partnership or Teitelbaum individually which checks were not reported in the income of either, we are satisfied that the respondent has established by clear and convincing evidence a pattern of fraudulent conduct on the part of petitioner with respect to 1946 and 1947, and we have found as a fact that a part of the deficiency for each of the years 1946 and 1947 was due to fraud with intent to evade the tax. [R. 1344] This conclusion is amply supported by the record before us without regard to the additional evidence of petitioner's criminal fraud conviction by a jury with respect to both years.

Docket No. 71483

THE DATE RANCH LOSSES

Respondent determined that petitioner did not operate the farm as a business for profit and, therefore, that the losses sustained from the operation were not deductible as business losses. Petitioner contends that the Date Farm was a business and that the losses are properly deductible. We agree with the respondent.

Whether an enterprise is conducted as a business for profit is a matter of intention and good faith, and all the facts in a particular case are to be considered. *American Properties, Inc.*, 28 T.C. 1100 (1957). The only evidence submitted by petitioner in this respect was his own testimony that the previous owner had made a profit, that the loss incurred by the previous owner was deducted as a business loss, that the loss incurred by petitioner for the firt year, 1948, was deducted on his tax return as a business loss and this deduction has not been challenged, that petitioner incurred expenses in the operation of the Date Farm, and that petitioner realized some income from the sale of the dates but that the price of dates was less than he expected it to be.

[R. 1345] Petitioner kept few records. At the trial he submitted a mass of unsorted cancelled bills. From the evidence submitted, it is clear that petitioner did not consider the date farming as a separate operation from the maintenance of comfortable living quarters. No effort had been made accountingwise to segregate the expenses of the residential facilities, which were substantial, from those of the farming operation. Moreover, petitioner made no effort to put the farming on a paying basis. See *Dean Babbitt*, 23 T.C. 850, 866 (1955). He spent little time on the Date Farm and, after separating from his wife in 1949, did not exercise managerial responsibility. There is no evidence concerning Melnick's efforts, if any, with respect to the Date Farm.

On the basis of the evidence submitted, we cannot find that petitioner possessed a good faith intention to operate the Date Farm as a business for profit.

THE ELECTRICAL CONVERSION EXPENSE

Petitioner deducted $79,951.66 for conversion of the electricity in the Fine Arts Building in 1950. Respondent determined that the expense was capital in nature and deductible only through depreciation.

Petitioner's primary basis for contending that the expense was not a capital improvement was that the conversion, pursuant to an ordinance of the City of Chicago, did not enhance the [R. 1346] value of the building. However, this Court has previously held that this factor is not the criterion which determines whether an expenditure is capital or ordinary and that necessary replacements or useful improvements may properly be capitalized and their cost amortized out of income of the years of their useful life, even though the market value of the whole property shows no perceptible increase. *Bonwit Teller & Co.*, 17 B.T.A. 1019 (1929), affirmed and reversed on other issues, 53 F. 2d 381 (C.A. 2, 1931), certiorari denied 284 U.S. 690. We hold that the electrical conversion cost is a capital expenditure.

LOSS ON SALE OF NOTE TO ROOSEVELT COLLEGE

Teitelbaum received three $2,500 payments from Roosevelt College during 1949, prior to the time he sold the note for $190,000. He contends that the $2,500 payments, by agreement of the parties, were treated as payments towards the sales price of the note, namely, $197,500, and that therefore the loss on the sale of the note amounted to $2,500. No evidence was introduced concerning the agreement, which, respondent argues, did not exist, except petitioner's self-serving statement. On the basis of this record, we are unable to find that the note was not sold for $190,000 and that the three $2,500 payments did not constitute interest payments. The respondent is sustained on this issue.

[R 1347] CONTRIBUTION TO DAN GILBERT

Respondent disallowed the deduction of $10,000 in 1950 on the basis that this amount was not in fact contributed to Dan Gilbert's campaign fund. Petitioner introduced a letter

written to him by an executive of the Chicago Restaurant Association, rejecting his request for a reimbursement of that amount because they intended that his fee include all such items. The letter itself does not establish that any such payment was in fact made. The letter establishes only that Teitelbaum made request for reimbursement. Members of the Chicago Restaurant Association testified that they had no knowledge of any such payment or contribution to Dan Gilbert. Gilbert himself testified, and he denied that he received a campaign contribution, or any other sum, from Teitelbaum, persons associated with Teitelbaum, the Chicago Restaurant Association, or members associated with it. Petitioner was unable to introduce any concrete evidence that he paid $10,000 to Dan Gilbert. Petitioner testified that the money was paid in cash. On the basis of the evidence, we are unable to find that petitioner paid Dan Gilbert $10,000, or any lesser sum in 1950.

Respondent determined that a part of the deficiency for the year 1950 was due to fraud with intent to evade tax. The basis of this determination is the disputed transaction [R. 1348] with Dan Gilbert. Respondent argues that Teitelbaum deliberately caused the Chicago Restaurant Association to issue a letter to Teitelbaum rejecting his request for reimbursement of the $10,000, and that such letter is proof of fraudulent conduct. The letter becomes significant as evidence of fraud only if we disbelieve Teitelbaum, or if we believe Teitelbaum was in fact acting fraudulently. Respondent has the burden of proving fraud. Section 1112, 1939 Code. The entire evidence of fraudulent conduct amounts to contradictory statements by Teitelbaum and Gilbert. However, we can find no cause to either believe or disbelieve Teitelbaum or Gilbert in this respect. The doubts in the record which operate against the petitioner as to the deficiency because the burden of proof is upon him are also effective to operate against the respondent upon the issue of fraud because the burden is upon him with respect to the latter issue. *Arthur M. Godwin*, 34 B.T.A. 485 (1936). We are unable to find from this evidence that a part of the deficiency for the year 1950 was due to fraud with intent to evade tax.

PROFESSIONAL INCOME AND EXPENSE—1951

Petitioner reported the amounts received from the Chicago Restaurant Association in 1951 in two separate categories, a straight fee of $75,000 and a special expense allowance of $49,800. The association had originally retained petitioner [R. 1349] in the late 1930's and at that time specified that he receive $5,000 as an expense allowance. Subsequent to that year, his fee was steadily raised, but no amount was designated as an expense allowance. Petitioner arbitrarily considered a consistent portion of the total fee to be an expense allowance, even though the Chicago Restaurant Association did not consider such to be the case. It was the intention of the Association that the fee be of sufficient size to enable petitioner to meet "special" expenses, requests, and union matters.

Petitioner deducted, under the heading of General Deductions, such items as Union Dues and Expense, Investigators Fees and Business Promotions which were connected with his activity as labor counsel for the Association. Nevertheless, he also deducted $49,800 as a catch-all expense for the same expenses. Teitelbaum's accountant had prepared a professional income schedule which was complete; however, Teitelbaum personally added the general deduction of $49,800. Petitioner offered no evidence in support of the claimed deduction, and we are satisfied from the record that he claimed the deduction with the knowledge that it was false and fraudulent and with intent to evade tax.

Petitioner deducted $13,240.27 for travel, transportation, hotels, etc., for the year 1951, part of which was incurred by him while residing at the Blackstone Hotel, Chicago. Chicago [R. 1350] was the location of petitioner's principal source of income. However, he also maintained a house as his personal residence there, and petitioner could not in any sense be considered "away from home" or in travel status while in Chicago. The expenses incurred while staying at the Blackstone Hotel were personal and not business, and, thus, not deductible. Additionally, the petitioner has offered no proof that the respondent erred in his disallowance of any such expenses for

the years 1949 to 1951, inclusive, and the respondent's determination in this respect is sustained.

GAIN ON SALE OF BUILDING

Petitioner reported net capital gain from the sale of the Douglas Building in the amount of $191,419.02. The sales price was stated on his return to be $600,000 and total costs to be $374,854.95. Included in the latter total was an expense item of $200,000 declared to be "expenses not heretofore deducted." The evidence clearly demonstrates the contrary. Many of the expenses which Teitelbaum included in the $200,000 figure had been previously deducted according to his instructions. Petitioner prepared the part of the schedule in question personally, and we are satisfied from the evidence that he did so with knowledge that the $200,000 item was false and fraudulent and with intent to evade tax.

[R. 1351] RADIO STATION W.M.O.R.

Petitioner acquired the stock of the Metropolitan Radio Corporation from friends at a time when he knew the corporation was either insolvent or becoming insolvent. He advanced further amounts to the corporation to pay expenses and deducted some of the advances on the Teitelbaum and Melnick partnership return as expenses of the partnership. He also claimed a business loss of $71,213.18 in 1951, in addition to those expenses deducted on the partnership return. No evidence was submitted concerning the uncollectibility of the advances, other than that a petition in bankruptcy was filed in 1952. The respondent determined that the loss of $71,213.18 was not incurred in 1951. We cannot find from the evidence that the loss, if any, occurred in 1951, and the respondent's determination in this respect is sustained.

Petitioners are not liable for the addition to tax provided by section 294(d)(2) for substantial underestimation of tax for 1951, for which year they did not file declarations of estimated tax. *Commissioner* v. *Acker*, —— U.S. —— (Nov. 16, 1959).

Petitioner put at issue every adjustment which respondent made in the deficiency notices for the years 1949, 1950, and 1951. Certain adjustments have been agreed to by the parties.

and these have been made a part of the findings of fact. [R. 1352] Finally, other than with respect to the adjustments discussed above, the petitioner submitted no evidence worthy of serious consideration. As a result, to the extent that any of the determinations of the respondent are not referred to specifically in this opinion, such determinations are hereby sustained.

Decisions will be entered under Rule 50.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 636

ABRAHAM TEITELBAUM,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION TO RECONSIDER PETITION FOR CERTIORARI AND FOR REHEARING.

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To the Honorable Justices of the Supreme Court of the United States:

Abraham Teitelbaum attorney *pro se*, respectfully prays that this Honorable Court reconsider his petition for Certiorari filed herein which seeks to reverse the decisions of the Tax Court and the United States Court of Appeals for the Seventh Judicial Circuit.

Petitioner would waive, if this Honorable Court would indicate that he do so, the return of the hundreds of thousands of dollars that Respondent wrongfully took from him by purported jeopardy tax assessments, levies and otherwise, in order that this Court upset the erroneous rulings of the Courts below to which rulings Hon. J. Earl Major, Judge of the United States Court of Appeals filed a dissenting opinion.

Petitioner's unswaivering patriotic belief in the Honor and integrity of his Government in the proper administration of the tax laws equally to all, and for the interpretation of complex tax laws by the Courts as a guide to bewildered taxpayers, prompts him to file this petition for reconsideration.

The reasons why this Court should allow Certiorari are divided primarily in four parts, and which are also embodied as a guide in the Rules of the Supreme Court.

1. There are numerous important Constitutional law questions involved which should be settled by this Court.

2. The various taxable districts in the different States are in conflict with each other, and, lack uniformity in applying the Internal Revenue Laws to taxpayers.

3. A Judge of the United States Court of Appeals filed his dissenting opinion in this cause on an important principle of law which has conflicting opinions.

4. In case at bar, a tax was assessed without affording Petitioner the right to present his books and records, a right to be heard, a right of appeal at the various levels of review in the Internal Revenue Department. In short, a tax was assessed without any examination of taxpayer's available books and records.

The latter point clearly demonstrates that petitioner was denied due process of law, as defined by the landmark case of *Hurtado v. California*, 110 U.S. 516:

> "Due process of law is a law which hears before it condemns, proceeds upon inquiry, and grants judgment only after a fair trial".

Therefore, petitioner respectfully prays that this Honorable Court reconsider his petition for Certiorari together with the typewritten briefs and records filed by permission of the Court of Appeals.

Petitioner further prays that all taxpayers who are the source of support for our Government be given a judicial guide and pattern for the proper administration of the tax laws of the United States for everyone alike. Nothing could be more just than to instill confidence in any Taxpayer towards the Taxing Officials in their equal enforcement of the laws.

Respectfully submitted,

ABRAHAM TEITELBAUM,
Attorney pro se.